

EXHIBIT 10

1 DRAFT/NOT CERTIFIED
2 Telephone Conference
3

4 December 1, 2006
5 10:30 AM
6 40 Gleneida Avenue
7 Putnam County Office
8 Building
9 Carmel, New York

10 BEFORE: HON. ANDREW P. O'ROURKE
11 Presiding Supreme Court Justice

12 SUPREME COURT OF THE STATE OF NEW YORK
13 COUNTY OF ROCKLAND

14 _____
15 ANNE BRYANT

16 Plaintiff

17 X

18 - versus -

19 Index No.
20 5192/00

21 BROADCAST MUSIC, INC., (a/k/a "BMI"),
22 FORD KINDER, KINDER & CO., LTD., VADIVOX, INC.,
23 JULES M. "JOE" BACAL; GRIFFIN BACAL, INC.,
STARWILD MUSIC BMI, WILDSTAR MUSIC ASCAP,
SUNBOW PRODUCTIONS, INC.,

24 Defendants

25 _____
X

ANNE BRYANT

Plaintiff

Index No.
2821/02

- versus -

SUNBOW PRODUCTIONS, INC.,

Defendant

22
23

24 Laurie Hardisty, RMR
25 Official Court Reporter

44 Gleneida Avenue, Carmel, NY 10512
(845) 225-3641 Ext. 294

<p>1 APPEARANCES: PATRICK J. MONAGHAN, JR., ESQ., 2 Monaghan, Monaghan, Lamb & 3 Marchisio, Esqs. 4 Attorneys for Plaintiff</p> <p>5 GLORIA C. PHARES, ESQ., 6 Patterson, Belknap, Webb & Tyler, Esqs. 7 Attorneys for Defendant Sunbow</p> <p>8 JUDITH SAFFER, ESQ., 9 Co-counsel BMI Legal Department</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 First, I want you to know that the 2 arrangements in Putnam County are not quite as 3 imposing as Rockland and much more humble, and there's 4 been a request by somebody's office that we have 5 certain electronic equipment. I doubt very much that 6 this courthouse has it. We're building a new 7 courthouse next door, but it won't be ready until next 8 year, and this case, I hope to God, is not still going 9 on then.</p> <p>10 MS. PHARES: I think it was our office that 11 inquired, and we -- we understand what's available, 12 and if we do need something, we'll provide it.</p> <p>13 THE COURT: Well, as far as I know, we have a 14 wall.</p> <p>15 MS. PHARES: That's fine.</p> <p>16 THE COURT: Okay. That should do it.</p> <p>17 Now, I want you to know that in several Court 18 Orders, and I believe in the letter I sent you all, 19 too, that -- that I asked not only for the witnesses, 20 but I asked for a short statement about what they 21 intended to tell us and also the time that would be 22 required. And I don't think I've gotten that from 23 anybody.</p> <p>24 MS. SAFFER: Yes, you did, Your Honor.</p> <p>25 Please forgive me. You got it from me, and you also</p>
<p>1 IN CHAMBERS:</p> <p>2</p> <p>3 THE COURT: The conference is going to begin. 4 We're going on the record. We have a Court 5 Stenographer.</p> <p>6 Please place your appearances on the record.</p> <p>7 MR. MONAGHAN: Yes, Good Morning, Your Honor. 8 Pat Monaghan for the Plaintiff.</p> <p>9 THE COURT: All right. Who else do we have?</p> <p>10 MS. SAFFER: Judith Saffer. Judith Saffer 11 for BMI.</p> <p>12 MS. TATE: It's Ms. Tate. I have Ms. Phares' 13 number to be reached at. Apparently she was at a 14 different number. It's 212-336-2786.</p> <p>15 THE COURT: Okay.</p> <p>16</p> <p>17 (Off the record discussion.)</p> <p>18</p> <p>19 (Gloria Phares connected to tele-conference.)</p> <p>20</p> <p>21 THE COURT: As I told everyone else, Ms. 22 Phares, this telephone conversation is being recorded. 23 I have a Court Stenographer here.</p> <p>24 There are some things that I want to get 25 across to you before we get together on Monday.</p>	<p>Page 3</p> <p>1 got from me a letter saying we'd like to know it from 2 everybody else.</p> <p>3 MS. PHARES: Your Honor, actually, I thought 4 we had sent a revised one with that information, but 5 we'll do that right after the call.</p> <p>6 THE COURT: Okay. Well, you might have.</p> <p>7 MS. PHARES: Then if you need the information 8 for purposes of planning right now, we can provide it.</p> <p>9 THE COURT: No, if you haven't sent it to 10 me, please do it by the end of the day so that I can 11 get some kind of feel for what we're going to do next 12 week.</p> <p>13 MR. MONAGHAN: Okay.</p> <p>14 MS. SAFFER: Your Honor, if I may?</p> <p>15 The reason that I wrote to you and pointed it 16 out was that in ... Sorry. Forgive me, forgive me; I 17 don't have the date. But you indicated that the trial 18 would occur next week and that you had set aside one 19 week for the trial. BMI has one witness, the 20 Plaintiff has listed 25 or 26 witnesses, and Sunbow 21 has listed, I believe, seven witnesses, and, at this 22 juncture, I'd like some help determining how we're 23 getting that all done in one week.</p> <p>24 MR. MONAGHAN: We're revising our list, 25 lopping off about 16 witnesses.</p>

<p>1 THE COURT: Well, good, because, you know, I 2 think I've stated this several times, but let me try 3 it again. This is the juncture that we're at. I 4 believe at this point that Sunbow -- excuse me -- has 5 proven to the Court's satisfaction that there were 6 written contracts that were the only way they entered 7 into agreements with artists.</p> <p>8 Now, Ms. Bryant's position is that there were 9 also -- excuse me -- unwritten agreements, and I 10 believe that it's up to her to prove that, and we 11 should be going along that route.</p> <p>12 MR. MONAGHAN: We understand that route 13 perfectly, Judge.</p> <p>14 THE COURT: Okay.</p> <p>15 MR. MONAGHAN: The issue with the oral 16 agreement is for the composition for which there is no 17 written agreement in order to --</p> <p>18 THE COURT: No, but hold on, hold on. When 19 you say there's no written agreement, the -- shouldn't 20 I take the position, or the court take the position, 21 that because there is no written agreement presently 22 before us, why shouldn't I say, well, this is just 23 like the rest of them; there was a written agreement 24 somewhere along the line and followed the same general 25 pattern?</p>	<p>Page 6</p> <p>1 excluded, except with -- with evidence -- except that 2 evidence that shows an agreement between Sunbow and 3 and Bryant, and, to me, nobody else is in this case, 4 with the exception of Bryant and Sunbow. The --</p> <p>5 MR. MONAGHAN: We don't have a problem with 6 that because the relationship is with Sunbow as to all 7 the compositions.</p> <p>8 THE COURT: Okay. I just want you to know 9 where I believe we're going.</p> <p>10 Now, if that's where we are going, then we 11 shouldn't need an awful lot of witnesses.</p> <p>12 MR. MONAGHAN: As I say, Judge, we knocked 13 off about 17 witnesses because we think they're 14 damages witnesses.</p> <p>15 THE COURT: All right. So, I would take 16 witnesses -- I would take witnesses that know anything 17 about a so-called unwritten agreement or lost 18 agreement. I would take at least one witness that is 19 an expert in the -- this general area.</p> <p>20 I notice, Mr. Monaghan, that you had two 21 witnesses that were experts, and, so, I hope that you 22 can get that down to one.</p> <p>23 Hello?</p> <p>24 MR. MONAGHAN: Yes, Judge. I don't know what 25 that noise --</p>
<p>1 MR. MONAGHAN: You should.</p> <p>2 MS. PHARES: Your Honor?</p> <p>3 MR. MONAGHAN: We welcome that.</p> <p>4 MS. PHARES: Your Honor, I think --</p> <p>5 MR. MONAGHAN: We still need -- I believe, 6 Your Honor -- if I may -- you still need some 7 foundation that the same written agreement that covers 8 Composition X, in this case the Jem Agreement, applies 9 to the other compositions at issue. You still need a 10 foundation, I believe, on the record for that.</p> <p>11 MS. PHARES: Your Honor, I think the 12 confusion that is going on here, Ms. Bryant wrote 13 materials for GBI, and she wrote materials for Sunbow, 14 and in some cases the music is similarly related, and 15 Mr. Monaghan is trying to open this case to looking at 16 the agreement with GBI as thinking that they have 17 something to do with the agreements with Sunbow 18 because the compositions are related.</p> <p>19 Our position is that the only thing before 20 this court is Ms. Bryant's relations with the 21 Defendants Sunbow and BMI.</p> <p>22 THE COURT: Well, I tend to agree with you. 23 As a matter of fact, I -- Ms. Phares, you wrote in one 24 of the letters, I think going back to mid-November, 25 that it's your position that you want the Plaintiff</p>	<p>Page 7</p> <p>1 THE COURT: It's probably the FBI. Don't 2 worry about it.</p> <p>3 But, so, let's try and keep the number down. 4 Now, when I said the whole week would be 5 devoted to this case, it certainly was my hope that we 6 could finish this up to get to the point where the 7 Plaintiff is going to rest, and, at that point, as I 8 pointed out in some decision or another, that's the 9 point where I will accept a motion from the Defendant 10 Sunbow to dismiss, and I'll look and see where we're 11 at.</p> <p>12 MR. MONAGHAN: Okay.</p> <p>13 THE COURT: All right?</p> <p>14 Now, the next thing is: Why do we still have 15 BMI in this case? Didn't that end of it get settled 16 and the -- the catalog, composition catalog, get 17 secured away?</p> <p>18 MR. MONAGHAN: No, it didn't, Your Honor. 19 Well, there's two parts to the BMI story. One part is 20 the settlement with Bacal and Kinder, which 21 accomplished changes in the registration. That is 22 still an ongoing process. That hasn't occurred yet 23 completely.</p> <p>24 MS. SAFFER: Excuse me. I'd like to be able 25 to comment on just that portion.</p>

<p>1 The changes for Kinder were done when we got 2 a letter from Mr. Kinder at his deposition this 3 summer. They were immediately made. Mr. Bacal's 4 settlement with Anne Bryant indicated and it was 5 provided to us by Pat, that Bacal would give whatever 6 was needed in order to accomplish that. We have asked 7 Pat repeatedly, get a letter from Mr. Bacal telling us 8 to change our records and we'll do it. Nothing has 9 come.</p> <p>10 MR. MONAGHAN: Well, Bacal is no longer 11 represented by the firm. Mr. Tannenbaum (sic), we've 12 been notified that they would not accept a subpoena 13 for him. And I see that Gloria has served a subpoena 14 or is about to.</p> <p>15 As far as getting a letter from him, as I 16 pointed out when this was first broached, that could 17 be a very difficult proposition, and it's our position 18 that the settlement tells him what to do, Number 1.</p> <p>19 Number 2, we don't believe that, even as to 20 the Kinder settlement, that BMI has yet completed the 21 proper corrections to the registration. But that's 22 only half the BMI case. The other part of the case, 23 Judge, is the other several hundred thousand dollars 24 that Ms. Bryant lost from the royalties that were 25 lost. We have a claim in our Complaint against BMI</p>	<p>Page 10</p> <p>1 evidence.</p> <p>2 THE COURT: Okay.</p> <p>3 MS. SAFFER: Your Honor, if I may?</p> <p>4 THE COURT: Yes; go ahead.</p> <p>5 MS. SAFFER: And we vehemently dispute Pat's 6 interpretation of the BMI contract. But even if, 7 assuming arguendo, he was correct, Mr. Bacal and Mr. 8 Kinder were also BMI writers. Why should we have, if 9 you will, tout that Anne's claim was any more valid 10 than their claims were?</p> <p>11 We have done everything. We are not poaching 12 any royalties. We have paid out all the royalties. 13 Even if we make a change to Mr. Bacal's interest, if 14 you will, without getting the letter, we are talking 15 literally hundreds of dollars, not hundreds of 16 thousands of dollars; hundreds of dollars. That's it.</p> <p>17 MR. MONAGHAN: Well, I don't understand, 18 then, why the contract, the BMI contract Anne signed 19 with BMI in '71, says that you have the right to 20 withhold monies if there's a problem with the 21 registration. These are registrations that were 22 originally in her name, in some cases for a hundred 23 percent, that were reduced without her consent, 24 without her approval, without even notice to her.</p> <p>25 THE COURT: All right. I don't want to get</p>
<p>1 for breach of duty, breach of fiduciary duty. When 2 you hear the evidence, especially Kinder's testimony, 3 and you look at the BMI contract, you will conclude 4 that they have an obligation to make sure and protect 5 their writers.</p> <p>6 THE COURT: Hold on. Isn't it a fact that if 7 payments were made by BMI to Kinder or anybody else, 8 because they had the wrong information, that it's up 9 to Ms. Bryant to get it back from whoever got the 10 payments?</p> <p>11 MR. MONAGHAN: No, that's -- well, it's -- 12 it's possible she can pursue that, but the -- BMI also 13 had an independent obligation itself to its own 14 writers. There's no -- when someone -- we have the 15 contract, actually, right -- right here. I 16 anticipated this being the question. And the contract 17 has provisions in it.</p> <p>18 One, why would someone be a member of either 19 of those performing rights societies if it doesn't 20 confer any -- any protection upon them?</p> <p>21 MS. SAFFER: Your Honor, that's --</p> <p>22 THE COURT: But --</p> <p>23 MR. MONAGHAN: That's an issue I think you're 24 going to have to hear testimony on. And I think as 25 far as BMI, I ask you to reserve until you hear the</p>	<p>Page 11</p> <p>1 too far into --</p> <p>2 MR. MONAGHAN: That's the idea of the case, 3 Judge, and I'd ask you to hear the evidence.</p> <p>4 THE COURT: All right. I'll hear some 5 evidence on it, but let's get back to this fact that 6 BMI needs this letter.</p> <p>7 MR. MONAGHAN: I welcome any suggestions on 8 how I can squeeze it out of Bacal.</p> <p>9 MS. SAFFER: Well, you entered into a 10 settlement agreement with him in which he said that he 11 would give it to you, so it seems to me that that's 12 only between you and Mr. Bacal, and if Mr. Bacal is 13 now represented by a different lawyer, you should give 14 us a different lawyer. It's your arrangement with him 15 that's the issue --</p> <p>16 THE COURT: Pat? Hold on --</p> <p>17 MS. SAFFER: -- on payment.</p> <p>18 THE COURT: -- hold on.</p> <p>19 How about a Court Order based on the fact 20 that Kinder is -- is nominally still a party to this 21 case? At least he's in your caption.</p> <p>22 MR. MONAGHAN: No.</p> <p>23 MS. PHARES: He's already settled, Your 24 Honor.</p> <p>25 MR. MONAGHAN: Bacal and Kinder are out, but</p>

<p style="text-align: right;">Page 14</p> <p>1 a Court Order inspecting the settlement vis-a-vis 2 Bacal is a very good idea.</p> <p>3 MS. SAFFER: Your Honor, I'm prepared 4 unilaterally to say that we will, when I get off this 5 phone call, make the changes for Bacal, and to the 6 extent that Mr. Bacal, in the past year, received a 7 hundred dollars that Anne claims that she's entitled 8 to, I would be happy to write my personal check, if 9 this will get rid of this problem.</p> <p>10 MR. MONAGHAN: That's not necessary. It's in 11 the holiday season. We're not looking for your 12 personal check.</p> <p>13 THE COURT: You know, I'd put in ten bucks 14 myself to get rid of the whole case.</p> <p>15 MS. SAFFER: That will not be a problem, Your 16 Honor. We will make the changes to Mr. Bacal's 17 catalog to the extent that Anne claims that she should 18 be credited with what we're now giving to Mr. Bacal, 19 and, in the future, that will entitle her to each 20 distribution to make an additional ten bucks.</p> <p>21 THE COURT: Now, listen, we've got three very 22 bright lawyers here. Come up with some language, put 23 it into a Court Order, I'll sign it, and that ought to 24 be good enough for BMI --</p> <p>25 MR. MONAGHAN: Okay.</p>	<p>1 this, and if you want the morning off to be with your 2 wife, if she's being operated on, if you ask, I will 3 certainly give it to you.</p> <p>4 MR. MONAGHAN: Then I ask for it.</p> <p>5 THE COURT: Okay; then you've got it.</p> <p>6 MR. MONAGHAN: Thank you, Judge.</p> <p>7 THE COURT: I would be very glad -- you know, 8 your associate there Michael was an intern in my 9 office.</p> <p>10 MR. MONAGHAN: Yes, I know that, Judge.</p> <p>11 THE COURT: We don't hold that against him, I 12 want you to know.</p> <p>13 MR. MONAGHAN: No, I understand that.</p> <p>14 THE COURT: He did a very good job.</p> <p>15 MR. MONAGHAN: And I understand he never 16 worked on this case.</p> <p>17 THE COURT: No, he never had anything to do 18 with this case.</p> <p>19 All right. Now, let me get to another area. . .</p> <p>20 I got a letter from Mr. Monaghan pointing out that 21 they had received a check from Sunbow and that should 22 lead to depositions, I think it was, of Mr. Knapp or 23 something like that. I also have just received, and I 24 haven't even read it, just sort of skimmed through it, 25 a very detailed explanation, I assume, of where that</p>
<p style="text-align: right;">Page 15</p> <p>1 THE COURT: -- to make whatever changes are 2 necessary.</p> <p>3 I've got a copy of the settlement. They were 4 in the lawsuit; so, put your fertile minds to work 5 here.</p> <p>6 MS. SAFFER: Your Honor, if it is --</p> <p>7 THE COURT: Think about that.</p> <p>8 MS. SAFFER: If it is -- BMI's records have 9 to be adjusted, I will volunteer to draft that 10 document for you this afternoon.</p> <p>11 THE COURT: Okay.</p> <p>12 MS. SAFFER: And I will bring it to you 13 Monday when we recommence the trial.</p> <p>14 THE COURT: Okay.</p> <p>15 MR. MONAGHAN: There's one housekeeping 16 thing, if I may? My wife is having some surgery on 17 Tuesday morning. I was thinking that perhaps we could 18 do part of the -- it's important surgery. I was 19 thinking perhaps we could have -- and I know you set 20 aside this week, and perhaps we could have the Kinder 21 deposition, video deposition, which was pursuant to 22 your Order, played in the morning, and my associate 23 Michael would cover that part of it. But I'll be 24 there for the afternoon at least.</p> <p>25 THE COURT: Well, if you are lead counsel in</p>	<p>1 check came from.</p> <p>2 MS. PHARES: Your Honor, if I can just 3 describe to you briefly what's happened?</p> <p>4 THE COURT: Yes.</p> <p>5 MS. PHARES: Under the agreements with Kinder 6 and Bryant, they are entitled to certain publishing 7 rights which Sunbow has conceded all along, just not 8 the ones she is claiming, and those are managed by 9 Sony ATV and then sent through to Sunbow and then 10 divided up among all the people that are -- who appear 11 on those sheets and then redistributed, and we have 12 paid these before. Mr. Monaghan has produced copies 13 of similar kinds of royalty statements as Plaintiff's 14 Exhibits 17, 18, and 19, and these are simply the 15 royalties that have been due -- admittedly late, but 16 that lateness has been cured -- that have been due in 17 the past for the royalties periods that are indicated 18 on those statements. And I can't imagine why -- why 19 Plaintiff, given the burden of what she has to prove 20 with respect to an oral agreement, thinks that she's 21 entitled to another witness relating to these royalty 22 statements, let alone a deposition.</p> <p>23 THE COURT: Hold on one second.</p> <p>24 MS. PHARES: And the notion, as I say, that 25 there's another witness or -- let alone a deposition</p>

<p style="text-align: right;">Page 18</p> <p>1 of that witness, is a complete detour from the -- the 2 matter that's before the court, which are these oral 3 agreements that she contends, you know, in addition to 4 the -- the written agreements with Sunbow.</p> <p>5 MR. MONAGHAN: That's really -- I don't want 6 to fence with Gloria right now, Judge. You've heard 7 too much of this back and forth; but here it is on the 8 eve of trial, we get a check. It's not clear to us 9 exactly why we get this check, although an explanation 10 has been proffered, but without -- and we're obliged 11 to accept that explanation without testing somebody?</p> <p>12 But I say, a deposition is not unusual for -- and -- 13 and I think Mr. Rigby may be there, am I correct, 14 Gloria?</p> <p>15 MS. PHARES: He will be there.</p> <p>16 MR. MONAGHAN: Okay. Neil Rigby.</p> <p>17 MS. PHARES: He also --</p> <p>18 MR. MONAGHAN: Let me just finish with this 19 point.</p> <p>20 That if we can perhaps get up there an hour 21 earlier or something and take Mr. Rigby's deposition 22 before trial ... I'm not suggesting disrupting the 23 trial. I want to find out the background of the 24 checks that just pop up, just by happenstance, on the 25 eve of each trial.</p>	<p>1 to offer. And I just think this is -- this is 2 unnecessary.</p> <p>3 MR. MONAGHAN: But, you know, I didn't issue 4 the check on eve of trial triggering this curiosity.</p> <p>5 MS. PHARES: Well, curiosity isn't really 6 enough to burden Sunbow with --</p> <p>7 MR. MONAGHAN: But curious as to why we just 8 got it.</p> <p>9 THE COURT: Well, I want you to know that I 10 do not belong to the school of, you know, counter- 11 spies and curious happenings. What happens happens.</p> <p>12 I'm not going to -- you're not going to take 13 any more depositions until we get this week under our 14 belt, at least.</p> <p>15 MR. MONAGHAN: Okay.</p> <p>16 THE COURT: And I don't think then, because I 17 want to -- to really, as I said in the Order, I want 18 to give Ms. Bryant her chance to make her case. Then 19 I want to give Sunbow their chance to get out of this 20 case, if they can.</p> <p>21 MR. MONAGHAN: Well, Your Honor, you have 22 given Sunbow multiple opportunities to get out. 23 They've filed more motions than Carter has little 24 liver pills. But let me just say this: The 25 characterization that the Plaintiff, who did not have</p>
<p style="text-align: right;">Page 19</p> <p>1 MS. PHARES: Your Honor?</p> <p>2 THE COURT: Yes?</p> <p>3 MS. PHARES: This is really a frolick and a 4 detour. These are -- when Mr. Monaghan sent you the 5 material that he did the other day, he neglected, by 6 the way, to -- to add the following page, which says 7 that if she has a problem with any of these 8 statements, she's supposed to make a detailed claim 9 about them within a year.</p> <p>10 We certainly have never heard any claims from 11 Ms. Bryant in the past relating to these, and there is 12 no basis for rethinking that she has any -- any 13 additional claims. Most of these have to do with -- 14 not all, but many of them have to do with foreign 15 royalties. Some of them are domestic ones. There are 16 ring tones. So, the only thing that Mr. Monaghan 17 perhaps has a complaint about is that they weren't 18 paid as timely as he would like, but, frankly, that's 19 not the topic of this trial and it has never been.</p> <p>20 And, furthermore, the -- you know, to have 21 the notion that we're now going to need deposing 22 witnesses is pretty amazing given that -- that Pat has 23 had about six or seven experts on his -- on his list, 24 including Mr. Berman -- Berman whom he did not offer 25 for a deposition and he is, I gather, still proposing</p>	<p>1 any written agreements in her possession for over four 2 years, the characterization that she's now, although 3 there is a written agreement that she has accepted -- 4 that's the Jem Agreement. She's accepted that 5 agreement. She doesn't deny it's her signature. She 6 doesn't accept some of the other agreements that have 7 been proffered, but she does accept that one as 8 genuine. The characterization that -- that now we're 9 trying to sue on an oral agreement -- remember, before 10 the Appellate Division came down with its ruling, the 11 Court did not permit us to amend to include a claim on 12 the written agreement; however, with the Appellate 13 Division's ruling and with -- ruling and with the fact 14 that the Court has ruled, you have ruled that the 15 written agreement applies, she is bringing her claims 16 under that written agreement, but she must lay a 17 foundation that that agreement applies to the other 18 compositions, which Sunbow's already admitted.</p> <p>19 MS. PHARES: Hang on, hang on. Wait a 20 minute. This is an argument that Mr. Monaghan tried 21 to make several times over the course of the last six 22 months. This is not what happened. The issue before 23 the Appellate Division had nothing to do with the 24 amendment of the Complaint, and Mr. Monaghan moved to 25 amend the Complaint when we were in the middle of</p>

<p>1 trial. Sunbow's defense to that was that that was too 2 late, it was improperly supported, and that we were 3 prejudiced. And that was the grounds for excluding 4 it, and they are still the grounds for excluding it. 5 I'm not finished, Pat; and I respected you 6 before.</p> <p>7 THE COURT: Hold on. I denied that, the 8 amendment.</p> <p>9 MS. SAFFER: Denied the motion.</p> <p>10 THE COURT: Yes.</p> <p>11 MS. PHARES: And they are not in the case. 12 And as part of her motion, Ms. Bryant submitted an 13 affidavit sworn to the court that -- that she accepted 14 that the agreements governed all of her relations with 15 Sunbow, and she submitted that to Justice O'Rourke 16 asking him to rely on it when she wanted to amend. 17 And we are now going to go back and now have her 18 saying, oh, no, it's -- they don't, they don't all 19 apply. And, in fact, Justice O'Rourke, when he ruled 20 on the framed-issue hearing, found that that same form 21 agreement governed all of her relations with Sunbow. 22 So, I hear Pat now saying, one, that if there 23 isn't an agreement, he's entitled to go into that; 24 and, two, he thinks he's entitled to construe these 25 agreements. These agreements are not in front of the</p>	<p>Page 22</p> <p>1 for ring tones; is that correct? 2 MR. MONAGHAN: I believe so. 3 THE COURT: Well, wasn't that how this case 4 started, with Anne Bryant on the -- the stand playing 5 her cell phone for me, which had the transformer music 6 on it? 7 MR. MONAGHAN: Yes, Your Honor, you're right. 8 That was when -- used when -- was the ring tone 9 licensed for the company; that that -- actually, you 10 know, the telephone company, they had to buy a license 11 from somebody. 12 MS. SAFFER: Well, for whatever it's worth, 13 Your Honor, BMI pays for the performance of ring 14 tones, and Anne has received royalties from BMI for 15 the performance of her music on ring tones. 16 THE COURT: Okay. I'm coming down to the 17 last couple issues here. 18 I think it was Ms. Phares said, you know, 19 what's going to happen. 20 When we last left the -- Ms. Bryant was on 21 the stand under Cross-examination. Now, I believe 22 that that Cross-examination should go forward, and, 23 Ms. Phares, you can ask any question you want about 24 unwritten agreements whatever. But I'm not going to 25 stop now and go back to direct questioning. And</p>
<p>1 Court.</p> <p>2 MR. MONAGHAN: I am of -- that's an 3 interesting proposition, Your Honor. Your Honor's 4 already found the written agreement applies, but -- 5 but what I'm hearing from my opponent is it applies 6 only as a one-way street; it doesn't apply as to any 7 rights that Ms. Bryant might have under the very 8 written agreement Sunbow begged you to construe. 9 MS. PHARES: And you agreed to it.</p> <p>10 MR. MONAGHAN: Because I didn't have a signed 11 copy. How could I embrace a copy where I have no 12 signed agreement?</p> <p>13 THE COURT: Ladies and Gentlemen --</p> <p>14 MR. MONAGHAN: Discovery is closed. What 15 kind of a lawyer --</p> <p>16 THE COURT: Ladies and Gentleman, please.</p> <p>17 MR. MONAGHAN: -- submits an unsigned 18 contract without knowing if his client ever signed it?</p> <p>19 THE COURT: I tell you what: If you two 20 don't stop talking over each other and allow me to 21 talk, I'm going to hang up on you.</p> <p>22 MR. MONAGHAN: Sorry. I apologize.</p> <p>23 THE COURT: All right. Let's get down -- one 24 of the things I think I heard somewhere along the line 25 is that in this royalty check, there was some money</p>	<p>Page 23</p> <p>Page 25</p> <p>1 then -- excuse me -- Mr. Monaghan, you've got 2 Redirect. 3 MR. MONAGHAN: Yes. 4 THE COURT: I'm going to give you a fairly 5 wide area on that, but not as wide, probably, as you 6 want. And then we've got Recross, and that should 7 finish Ms. Bryant's testimony. And my hope is that we 8 can finish that on Monday. 9 MR. MONAGHAN: Your Honor, I was going to 10 suggest ten minutes -- I mean, it's two years ago that 11 we stopped the trial. I was going to suggest sort of 12 a ten-minute-for-each-side opening, supplemental 13 opening, if you will, to say where we are now and in 14 light of the -- the developments in the case. 15 THE COURT: Well, I'll go along with that. 16 MR. MONAGHAN: That will be helpful to you. 17 THE COURT: I'll go along with that, but I 18 tell you, since you write to me I think once a week, 19 both of you -- I can't tell you how many trees we've 20 killed with this case -- that I've been sort of 21 following it; but, yes, fine, that will be ten- 22 minutes a piece, and then we're going to get Anne back 23 on the stand. 24 MR. MONAGHAN: Okay. 25 THE COURT: You're going to continue with</p>

<p style="text-align: right;">Page 26</p> <p>1 Cross, and then you go into Redirect, etcetera. And 2 let's try and finish her up on Monday.</p> <p>3 MR. MONAGHAN: Okay.</p> <p>4 THE COURT: All right? Then, on Tuesday ...</p> <p>5 MR. MONAGHAN: Kinder; and I have the morning 6 issue with my wife.</p> <p>7 THE COURT: Yeah; okay. So, we'll get 8 together at 2:00 o'clock on Tuesday.</p> <p>9 MS. PHARES: Now, hang on. So, we are not 10 going to -- you're saying that your associate is not 11 going to do the --</p> <p>12 MR. MONAGHAN: Whatever the Judge's pleasure. 13 I am the lead attorney, and the Judge has --</p> <p>14 THE COURT: Well, I'll tell you my problem. 15 As bright as Michael is, that, let's supposing we get 16 into arguments about questions during the -- during 17 the showing of this EBT and I have to make rulings?</p> <p>18 MR. MONAGHAN: Yes.</p> <p>19 THE COURT: I would think that you, as lead 20 attorney, want to be there.</p> <p>21 MR. MONAGHAN: I do.</p> <p>22 MS. PHARES: Well, I have a question: 23 Aren't you submitting -- you're not submitting the 24 whole examination?</p> <p>25 MR. MONAGHAN: I don't know how -- actually,</p>	<p>1 demeanor and judge the credibility of the witness, 2 just as you would with a live witness. And that's 3 what the Order said. The Order said it's essentially 4 a trial witness. That's why we spent all the money to 5 go down there and made the motion. So, I think it's 6 important that you witness his demeanor and see the 7 testimony.</p> <p>8 MS. SAFFER: Well, once again, I go back to a 9 very practical consideration. I was under the -- at 10 least an understanding that we were going to try to 11 wrap this thing up in a week. If we take a full day 12 on Mr. Kinder, how are you going to get all the other 13 witnesses to be heard that everybody wishes to have?</p> <p>14 To be perfectly frank, I've got one witness, 15 and my witness, I said to the Judge, I expect I could 16 complete in about two hours. So, it's not really 17 going to effect my participation so much as I want.</p> <p>18 You know, I sort of do consider myself 19 slightly impartial. I would like to think that the 20 Judge gets an opportunity to get a total picture from 21 everybody's point of view, and, therefore, I wonder 22 why we need to spend a full day with Mr. Kinder and 23 down in Florida and not -- where he went to elementary 24 school --</p> <p>25 THE COURT: Okay; all right. Okay. Let's</p>
<p style="text-align: right;">Page 27</p> <p>1 the technology doesn't allow for it, doesn't allow for 2 anything other than playing the whole darn thing. 3 We -- actually, you know, I think the Judge should 4 hear the whole thing.</p> <p>5 MS. PHARES: Well, I mean --</p> <p>6 MR. MONAGHAN: We took a lot of money to go 7 to Florida. We took a lot of money on the Reporter. 8 I think he's a critical third-party witness and sheds 9 a lot of light on the relationship also with BMI as 10 well. So, I think he's a very important witness.</p> <p>11 MS. PHARES: Well, wait a minute. But we 12 only have a narrow issue. The deposition is all over 13 the place, and what you're proposing now is that we 14 take all the time from -- that we spent on that 15 deposition in court again, instead of you selecting 16 the selections that you want.</p> <p>17 THE COURT: How long is the deposition?</p> <p>18 MR. MONAGHAN: Well, it was a videotaped 19 deposition.</p> <p>20 MS. PHARES: It was about three or four 21 hours, Your Honor, five.</p> <p>22 MR. MONAGHAN: That's correct; but you 23 still -- Your Honor, this is -- this is a trial 24 witness now. This is not a deposition. This is a 25 trial witness, and we think it's important you see his</p>	<p>1 back up here.</p> <p>2 Mr. Monaghan, what you want to do is see if 3 you can get a, you know -- you can run this through 4 and -- a machine and find out, you know, how many feet 5 are involved, and maybe you can bring it up to the 6 point where you want that testimony, you don't want 7 the other stuff.</p> <p>8 MR. MONAGHAN: Okay.</p> <p>9 THE COURT: I'm going to ask you to do that.</p> <p>10 MR. MONAGHAN: Will do.</p> <p>11 THE COURT: Because one way or another, 12 you've only got three hours on Tuesday afternoon to do 13 this whole witness; so, try and get it done by the end 14 of three hours. All right?</p> <p>15 MR. MONAGHAN: All right.</p> <p>16 MS. PHARES: And if you're going to designate 17 testimony, as I assume you are, would you just let us 18 know the lines and so forth in the transcript so that 19 we can prepare with any cross designation that we 20 need?</p> <p>21 THE COURT: I think that's fair.</p> <p>22 MR. MONAGHAN: All right.</p> <p>23 THE COURT: Okay. So, all right, that I 24 think takes care of all of the housekeeping issues 25 that we have, and if there's something any of the</p>

<p>1 parties want to put on the record, do it now. 2 MS. SAFFER: I would like to ask, since Mr. 3 Monaghan has indicated that he's removed 16 witnesses, 4 if he could tell us who he still intends to call so 5 that we can prepare only for what's relevant. 6 MR. MONAGHAN: We both indicated, Gloria and 7 I, that we're going to submit revised witness lists. 8 THE COURT: All right. 9 MS. PHARES: As early in the day as possible, 10 okay, because we are all preparing, and this has a 11 huge impact on everyone's preparation. 12 MR. MONAGHAN: Of course. 13 Also, Judge, yesterday I raised the 14 possibility of trying to simplify this with some 15 stipulations, some stipulated facts. I don't know why 16 this idea just occurred to me, but ... By simplifying 17 that -- both Gloria and Judy have said that they were 18 amendable to it, but crafting it over night, I tried 19 to do that, but I just couldn't put it together. 20 THE COURT: Well, look I'd certainly be in 21 favor of it. I would say continue working on it. 22 Maybe the three sides could come up with the points 23 that they're willing to concede, and when you get here 24 on Monday morning, you could sit down and we could put 25 it on the record.</p>	<p>Page 30</p> <p>1 MR. MONAGHAN: All right. Thank you, Judge. 2 THE COURT: All right. Have a good weekend 3 all. 4 MS. PHARES: It's -- Your Honor? 5 THE COURT: And don't send me any more mail 6 until Monday. 7 MR. MONAGHAN: Monday is fair game? 8 THE COURT: No. Goodbye. 9 10 (Whereupon the proceeding concluded.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 32</p>
<p>1 MR. MONAGHAN: That would be great. 2 MS. SAFFER: Well, Your Honor, I think I made 3 a substantial contribution. I conceded that we'll 4 change our claim for Mr. Bacal. Does that count for 5 anything? 6 THE COURT: I'm sure you did. 7 All right. I wish you all a nice weekend. 8 It sounds like it's going to be a busy one. 9 MR. MONAGHAN: Yes. 10 THE COURT: But -- 11 MR. MONAGHAN: Well, Judge Judge? 12 THE COURT: Yes? 13 MR. MONAGHAN: You're starting at what time, 14 then, on Monday? 15 THE COURT: All right. 10:00 o'clock. I 16 have a regular calendar every morning, as you may 17 remember from Rockland County, and while I can get my 18 Principal Law Clerk to take a lot of them, some of 19 them I have to handle myself. And, so, 10:00 o'clock 20 we'll start and go through until lunch every day, 21 which is an hour-and-a-quarter, or something like 22 that, and around 12:30 or 12:00, and we'll wrap up -- 23 we have to be out of this building by 5:00 o'clock at 24 night, I want you to know, but you can leave things 25 here over night, you know, and at lunch time.</p>	<p>Page 31</p>

EXHIBIT 11

1 (DAILY COPY)
2 Continuing Bench Trial
3 (Day 3)

4 December 4, 2006
5 10:10 AM
6 40 Gleneida Avenue
7 Putnam County Office
8 Building
9 Carmel, New York

10 BEFORE: HON. ANDREW P. O'ROURKE
11 Presiding Supreme Court Justice

12 SUPREME COURT OF THE STATE OF NEW YORK
13 COUNTY OF ROCKLAND

14 _____ X

15 ANNE BRYANT

16 Plaintiff

17 - versus -

18 Index No.
19 5192/00

20 BROADCAST MUSIC, INC., (a/k/a "BMI"),
21 FORD KINDER, KINDER & CO., LTD., VADIVOX, INC.,
22 JULES M. "JOE" BACAL; GRIFFIN BACAL, INC.,
23 STARWILD MUSIC BMI, WILDSTAR MUSIC ASCAP,
24 SUNBOW PRODUCTIONS, INC.,

25 Defendants

26 _____ X

27 ANNE BRYANT

28 Plaintiff

29 - versus -

30 Index No.
31 2821/02

32 SUNBOW PRODUCTIONS, INC.,

33 Defendant

34 _____
35 Laurie Hardisty, RMR
36 Official Court Reporter
37 44 Gleneida Avenue, Carmel, NY 10512
38 (845) 225-3641 Ext. 294

<p>1 APPEARANCES: PATRICK J. MONAGHAN, JR., ESQ., 2 and MICHAEL KORIK, ESQ., Co-counsel 3 Monaghan, Monaghan, Lamb & 4 Marchisio, Esqs. 5 Attorneys for Plaintiff 6 7 GLORIA C. PHARES, ESQ., 8 and JOHN C. KNAPP, ESQ., Co-counsel 9 Patterson, Belknap, Webb & Tyler, Esqs. 10 Attorneys for Defendant Sunbow 11 12 JUDITH SAFFER, ESQ., 13 and JOHN COLETTA, ESQ., 14 Co-counsel BMI Legal Department 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 2</p>	<p>1 There's no question that there was an agreement by 2 which she turned over the copyrights to Sunbow to 3 exploit them for their mutual behalf, and the question 4 that you're going to have to answer and deal with 5 based on the evidence is what rights did she retain 6 when she turned over the copyrights. 7 The Defendant Sunbow has attempted to 8 distract the Court, I believe, by suggesting that 9 merely because it's a work-for-hire that we're dealing 10 with that the Plaintiff somehow signed away all her 11 rights. They then begged you, in 2004, to look at a 12 Jem agreement, which, at that point in time, was 13 unsigned, and they said repeatedly throughout their 14 pleadings, the Jem agreement is the Bible; the Jem 15 agreement is the agreement that governed all the 16 relationships. 17 There then was the issue of whether or not 18 some of the agreements which were tendered with the 19 Jem agreement in the middle of trial were legitimate. 20 The agreement, the Jem agreement, dated June 1, 1985, 21 does contain Ms. Bryant's signature, is not 22 challenged, and we submit does govern the relationship 23 between the parties, all the relationships, all the 24 compositions. 25 So, what's the beef? Why are we here?</p>
<p>1 THE COURT: All right, Ladies and Gentlemen. 2 In talking to the attorneys the other day, I had said 3 that I would give a few minutes to enable each side -- 4 all sides to refresh themselves and the Court where they 5 are and what they think we're doing here. 6 So, go ahead, Mr. Monaghan. 7 MR. MONAGHAN: Thank you, Your Honor. 8 Your Honor, this will involve some projection on the 9 board, but I promise I won't take longer than ten 10 minutes. 11 THE COURT: All right. 12 MR. MONAGHAN: After six years of litigation, 13 four appeals, one removal to federal court, and a 14 trial which was interrupted in 2004, the question of 15 the day is where are we now, where are we going, and 16 where are we with the evidence that's come in so far? 17 And, Your Honor, I clerked a case when I was 18 going to law school and there was a partner there 19 named Kiernan, and the word about Tom Kiernan was his 20 ability to simplify matters was his greatest talent. 21 He was the senior litigating partner. 22 This case has had a lot of complex issues 23 thrown at you, but it really boils down to a fairly 24 simple proposition. There's no question that Anne 25 Bryant composed the compositions that are at issue.</p>	<p>Page 3</p>	<p>1 Let's start with BMI. 2 MS. PHARES: Your Honor, where you can see, 3 I'm afraid we can't. 4 THE COURT: If you need to move around ... 5 The accommodations are not spacious here. We're 6 hoping for the new courthouse, though I hope this case 7 is over by the time the new courthouse gets here. So, 8 just moved around at your -- where you can see best. 9 MS. PHARES: If you don't mind, I'm just 10 going to go stand over here. 11 THE COURT: You can take the witness chair if 12 you want. 13 MS. PHARES: All right. 14 THE COURT: It won't hurt. Most lawyers 15 doesn't like to be witnesses. 16 Go ahead. 17 MR. MONAGHAN: In the course of the 18 litigation, in various pleadings before you, Judge, on 19 the many, many motions we've had to deal with, Sunbow 20 has made some damaging admissions. They're damaging 21 because they acknowledge, and we're going to bring 22 some of them up on the screen, and they're 23 evidentiary. These are not just pleadings or motions. 24 When they made informal judicial proceedings they 25 become formally judicially binding.</p>

<p>1 And what are those admissions?</p> <p>2 Now, what we're looking at is the face page</p> <p>3 of the appendix, and this is merely for convenience of</p> <p>4 reference. I have the volumes here.</p> <p>5 What has Sunbow already told the Court? It's</p> <p>6 told the Court that Ms. Bryant is entitled to her</p> <p>7 performance royalties. No problem. Ms. Phares</p> <p>8 stipulated to that the last time we were on.</p> <p>9 THE COURT: Go ahead.</p> <p>10 MR. MONAGHAN: It's told the Court she's also</p> <p>11 entitled to certain additional publishing royalties.</p> <p>12 Where is the fight?</p> <p>13 They don't agree with the type of rights to</p> <p>14 which -- to which we claim entitled. We got a check,</p> <p>15 which I brought to Your Honor's attention. We got a</p> <p>16 check just a few days ago, as we did before the 2004</p> <p>17 trial, for publishing royalties, music royalties.</p> <p>18 Now, Michael can you bring up, please, the</p> <p>19 first appendix reference?</p> <p>20 Fortunately I did leave one of the folders in</p> <p>21 the cart, despite this morass of stuff.</p> <p>22 In Sunbow's papers, which were submitted to</p> <p>23 Your Honor, this was -- this is a portion of the</p> <p>24 affidavit from Carole Weitzman submitted on -- in</p> <p>25 connection with their motion for summary judgment.</p>	<p>Page 6</p> <p>1 that she's entitled, Ms. Bryant, to mechanical</p> <p>2 royalties.</p> <p>3 And what would the Court define mechanical</p> <p>4 royalties as? We say, and all of the experts say, and</p> <p>5 Sunbow's own contract say, an audio visual work, which</p> <p>6 would be the classic definition, includes records with</p> <p>7 sound and visual or sound only. That's defined in</p> <p>8 their agreements.</p> <p>9 In evidence already before Your Honor are a</p> <p>10 number of the compositions, the transformers showing</p> <p>11 you VHSs, DVDs, and various other iterations for which</p> <p>12 Ms. Bryant receives nothing. They use her music, she</p> <p>13 receives nothing. This accounting that she just</p> <p>14 received, which will go into evidence, did not mention</p> <p>15 any of these other uses. Right now, as I'm standing</p> <p>16 before you, her music is being used all over the</p> <p>17 world. It's being used on the Cartoon Network, and</p> <p>18 this is already in evidence. I'm only repeating</p> <p>19 what's been testified to. There is a movie coming out</p> <p>20 next year, Steven Spielberg, Live Action Transformers</p> <p>21 Movie. The music in that movie is Ms. Bryant's music.</p> <p>22 If you go to the trailers now, you will hear</p> <p>23 transformers more than meets the eye. The classic</p> <p>24 song. That is her song. She neither gets credit for</p> <p>25 it, nor any money for it.</p>
<p>1 And ...</p> <p>2</p> <p>3 (Off the record discussion between</p> <p>4 Mr. Monaghan and Mr. Korik.)</p> <p>5</p> <p>6 MR. MONAGHAN: I submit, Your Honor,</p> <p>7 throughout the pleadings before the Court down below,</p> <p>8 there are at least a half a dozen places where Sunbow</p> <p>9 acknowledges, yes, she's entitled to her performance</p> <p>10 royalties, but she's also entitled to publishing</p> <p>11 royalties.</p> <p>12 Well, what does that do to the proposition,</p> <p>13 Your Honor, that she should be out of court? What</p> <p>14 does that admission do to the notion that we just</p> <p>15 found this agreement, which is dispositive, and you</p> <p>16 have nothing left? It destroys it. We're here</p> <p>17 because we haven't gotten a proper accounting of the</p> <p>18 royalties to which Ms. Bryant is entitled. The two</p> <p>19 checks that just -- the check that just came, came</p> <p>20 with a small bare-bones accounting, under the Jem</p> <p>21 agreement, the Jem agreement requires that there be an</p> <p>22 accounting for these royalties.</p> <p>23 So, what's the fight with Sunbow? The fight</p> <p>24 is we haven't gotten accountings for years for the</p> <p>25 royalties, and the major fight, the major fight is</p>	<p>Page 7</p> <p>1 Now, we have the agreement. We have the Jem</p> <p>2 agreement that they begged you to apply. At least 6</p> <p>3 or 7 times in their papers before you they said the</p> <p>4 Jem agreement is dispositive, the Jem agreement</p> <p>5 controls. We agree. And they also told you something</p> <p>6 else. They said it doesn't just apply to Jem, it</p> <p>7 applies to all of the compositions and all of the</p> <p>8 series, all of the Sunbow series. Okay? So, it</p> <p>9 applies to all of the compositions at issue in the</p> <p>10 case, including transformers.</p> <p>11 Now, Ms. Phares has been want to say that's</p> <p>12 not in the case. It's not in the case. They're not a</p> <p>13 Defendant Griffen Bacal is not a Defendant. We don't</p> <p>14 care because it's a Sunbow production. The names on</p> <p>15 all of those transformers products, it's not Griffen</p> <p>16 Bacal, it's Sunbow. You will hear evidence, you will</p> <p>17 hear additional testimony from other witnesses, that</p> <p>18 if Sunbow and GBI were the same, Ms. Weitzman</p> <p>19 testified, and we will put it in evidence, that the</p> <p>20 music was just handed over, handed over to Sunbow for</p> <p>21 use. The transformers music was the subject of that</p> <p>22 inquiry at her deposition.</p> <p>23 So, we're here. We're fighting about the</p> <p>24 royalties to which she's entitled. She has a</p> <p>25 contract. The contract does apply to all the</p>

<p>1 relationships. The contract is in the case. It 2 was -- they besieged you to put it in the case. So be 3 it. It's binding upon them. And the admissions in 4 the papers are binding.</p> <p>5 We'll give you a formal request to take 6 judicial notice of the admissions that were made by 7 Sunbow.</p> <p>8 Now, what's our beef with -- with BMI? Okay. 9 The BMI contract is Exhibit 1 in evidence. That 10 contract provides -- it's an old contract. I think 11 Ms. Bryant was just 21, perhaps.</p> <p>12 MS. BRYANT: My 21st birthday.</p> <p>13 MR. MONAGHAN: 21 at the time it was signed. 14 A long time ago, a while ago.</p> <p>15 MS. BRYANT: A while ago.</p> <p>16 MR. MONAGHAN: And it provides that when the writer signs up with BMI, a performing rights society, 17 that BMI is -- seeks and obtains acknowledgments and 18 guarantees that the composition is original, not 19 somebody else's work.</p> <p>20 Ms. Bryant, if you read the contract, you 21 will come away from that contract with a view that the 22 obligation to protect the writer, the member of the 23 society, is inherent in that -- in that contract. 25 You're going to hear testimony from Dr. Kinder, said</p>	<p>Page 10</p> <p>1 calculate only through the Year 2000 and -- I think it 2 was 2000, 2001, \$238,000.00 worth of damage. We've 3 had no discovery for three years. Those damages are 4 continuing and on-going. Our discovery stopped when 5 the Note of Issue was filed.</p> <p>6 So, our beef with BMI is a serious one. They 7 were supposed to protect their writers. They didn't 8 protect. They had a fiduciary duty to protect their 9 writers. They didn't do so. They accepted those cue 10 sheets without challenge and switched and changed 11 those registrations, to Ms. Bryant's detriment. So, 12 BMI is not just an innocent bystander in this case.</p> <p>13 That's the case. It's a contract case, an 14 unjust enrichment case against Sunbow. They received 15 huge royalties using Ms. Bryant's music. They 16 continue to receive huge royalties with respect to her 17 music, and the evidence is already in for the most 18 part on that major subject matter.</p> <p>19 THE COURT: Well, let me ask you a question 20 and we talked about this the other day on the 21 telephone. If Ms. Bryant only got 8% of transformers, 22 who got the other 92%?</p> <p>23 MR. MONAGHAN: Joe Bacal got a piece of it 24 and -- and, oh, Dr. Kinder.</p> <p>25 THE COURT: Well, now, you settled that with</p>
<p>1 the same thing.</p> <p>2 Now, BMIs position here as well, it's not our 3 fault that other people come in with cue sheets and 4 change registrations. They're only two parties 5 responsible for that process. One is Sunbow, which 6 sends in the sheets, and the other is BMI, who -- 7 which has the obligation to protect its writers. In 8 this case it didn't. In fact, the registrations are 9 still not straightened out, even after two 10 settlements, hard fought, hard negotiated settlements. 11 She still only gets something like 8.3% of 12 transformers, even though by all accounts, all 13 admissions she's entitled to a hundred percent of the 14 writer's royalty on transformers. We're still not 15 where we should be on correcting the riff.</p> <p>16 So, is it just, well, BMI is a not-for-profit 17 performing rights society and they shouldn't be held 18 accountable? No, Your Honor. They're responsible for 19 \$238,000.00 worth of damages we've already put in the 20 record as Exhibit 30. Exhibit 30 was a tally that Ms. 21 Bryant had calculated based on looking at what the 22 publisher got because. There's a two hundred percent 23 split on those royalties. The Publisher gets a 24 hundred percent of the performance royalties; writers 25 split up the other hundred percent. She was able to</p>	<p>Page 11</p> <p>1 them.</p> <p>2 MR. MONAGHAN: We did.</p> <p>3 THE COURT: So, wouldn't your claim be 4 against them if they -- for unjust enrichment if they 5 got the money and your client didn't?</p> <p>6 MR. MONAGHAN: Our claim is that, as far as 7 BMI, and they made changes, the source of which we 8 still don't know how those changes came about, they -- 9 maybe Kinder got the money, but they took the actions 10 that resulted in Kinder getting the money. Yes, we 11 have settled with Kinder, but that doesn't make it go 12 away. That doesn't erase the fact that changes were 13 made.</p> <p>14 THE COURT: By the way, under your view of 15 the case, it's Kinder that was unjustly enriched; 16 isn't that so?</p> <p>17 MR. MONAGHAN: Kinder may have been unjustly 18 enriched, but Sunbow was equally unjustly enriched. 19 Why? Because they made deals with the various 20 parties, various producers along the way and gave 21 away, gave away pieces of her attribution on those 22 particular compositions. And BMI is responsible not 23 because it got any money, we're not suggesting that 24 BMI got any money out of it. What we're suggesting is 25 they had an obligation to their writers under the</p>

<p>1 writers agreement. This is why you become a member of 2 that society in the first place. So, they shouldn't 3 have allowed those changes without checking with her. 4 Your Honor, they're being very, very zealous 5 right now. We haven't been able to get those changes 6 we worked out years ago with the settlements now 7 because they're being very zealous in protecting. If 8 they had been half as zealous along the way, we 9 wouldn't be here.</p> <p>10 THE COURT: Okay. I don't want to get into 11 the argument on this.</p> <p>12 All right. Thank you very much. And maybe 13 we could move that out of the way so Ms. Bryant could 14 see what's going on.</p> <p>15 Oh, you're going to go over there now. All 16 right.</p> <p>17 MS. PHARES: Preference of order, Your Honor?</p> <p>18 THE COURT: I think you're next up.</p> <p>19 MS. PHARES: Okay. I'll do this from here.</p> <p>20 THE COURT: Someone else can have the jury 21 chair if they'd like.</p> <p>22 MS. PHARES: I don't think we need this any- 23 more.</p> <p>24 MR. KORIK: Okay.</p> <p>25 MS. PHARES: So that I can see the Court.</p>	<p>Page 14</p> <p>1 contracts between Plaintiff and Defendant Sunbow. 2 Defendant has presented evidence that said written 3 contracts were the only way Defendant Sunbow operated 4 with the artists it employed. If Plaintiff intends to 5 now say there were oral contracts, it is up to her to 6 prove this, especially in the face of the integration 7 or merger clauses. That's the end of the quote.</p> <p>8 Now, Mr. Monaghan and -- and his client made 9 a motion to amend their Complaint at the end of 2005 10 in the middle of our trial and Your Honor denied that 11 motion. So, what Mr. Monaghan is now trying to do is 12 to just ignore that decision and say, well, no we're 13 here to construe the agreements.</p> <p>14 We aren't really here to construe the 15 agreements. We're here on her claim that she has an 16 oral agreement, in addition to the agreements that 17 Your Honor has found bound their relationship.</p> <p>18 Each of the Sunbow agreements contains a 19 merger clause stating that the agreement is the entire 20 agreement of the parties relating to its subject 21 matter and that it cannot be changed, rescinded, or 22 terminated orally. Under New York Law that clause is 23 the evidence of the parties' intent that the agreement 24 be considered a completely integrated agreement. It 25 also discharges all prior agreements that are</p>
<p>1 Good Morning, Your Honor. It is nice to see 2 you again.</p> <p>3 Before I begin, I just would like to -- I 4 have to say that there is a certain Alice-In-Wonder- 5 land quality about listening to the Plaintiff's 6 recounting of the beginning of this case. But the 7 Plaintiff, if you look at the Complaint in this case, 8 there is no contract claim, and despite the fact that, 9 from the very beginning of this case, as -- as Mr. 10 Monaghan points out, we have said that this was a 11 contract case. And it was only that there was such -- 12 such strenuous objection to the possibility of that 13 that this case went the way it did. But that was the 14 choice that was made by the Plaintiff. And it was 15 only when the -- she was confronted with finally the 16 signed agreements, and then we had to go through, 17 it-wasn't-my-signature phase, that we got to where we 18 are. But we are proceeding and Sunbow is proceeding 19 right now this week according to the findings that are 20 laid out in your Court August 10, 2006, letter, in 21 which you reaffirmed in the November 2nd decision on 22 Sunbow's CPLR 4401 motion based on admissions. And 23 according to that letter, and I'm going to now quote, 24 and this is what we discussed on Friday, the Court has 25 already found that there were written and valid signed</p>	<p>Page 15</p> <p>1 inconsistent with it or fall within the scope of the 2 agreement.</p> <p>3 The Sunbow agreement includes a section 4 relating to the royalties to which Kinder and Bryant 5 are entitled from rising from public performance, just 6 as Mr. Monaghan agreed, and which -- which Sunbow has 7 said since the beginning of this case. It also has a 8 section indicating to what publishing royalties 9 Plaintiff is entitled to. But that's not the subject 10 of the lawsuit today, even though that's the way Mr. 11 Monaghan would like to reform it.</p> <p>12 The Plaintiff has the burden of proving an 13 oral agreement that she claims entitles her to 14 royalties from a much broader range of publishing than 15 it permitted under the Sunbow agreements. Sunbow does 16 not believe that Plaintiff can carry her burden of 17 proving the oral agreement that she claims, but even 18 if it can, if she can show an agreement, it conflicts 19 and it relates to the subject matter of the written 20 Sunbow agreements, therefore is barred as a matter of 21 law under the parole evidence rule.</p> <p>22 And in connection with that, Your Honor, and 23 in light of the focus of this trial, as set out in 24 your August 10 letter, Sunbow is submitting this 25 morning four motions in limine. And I don't know to</p>

<p>1 whom we should be giving these to. Do you have a 2 courtroom clerk to whom you want us to give them or 3 should we hand them up to you?</p> <p>4 THE COURT: I'll take them.</p> <p>5 MS. PHARES: Okay.</p> <p>6 THE COURT: They really should be filed with 7 the County Clerk's Office and then they come upstairs 8 here, but since you have them all ready, let me have 9 them so I can take a look at them over the time I 10 have.</p> <p>11 MS. PHARES: We can also give a set and have 12 them filed, if that's what you prefer.</p> <p>13 THE COURT: Yes.</p> <p>14 MS. PHARES: Okay. How would that be?</p> <p>15 (Handing to Judge.)</p> <p>16 MS. PHARES: The first is that the Court -- 17 and we also discussed this on Friday, is that the 18 Court exclude testimony about agreements with parties 19 other than Sunbow. I believe that Your Honor endorsed 20 that idea when we discussed it on Friday.</p> <p>21 The other three motions in limine relate to 22 witnesses that the Plaintiff has noticed. 23 Specifically we move to exclude the testimony of Neil</p>	<p>Page 18</p> <p>1 have extensive area -- experience, rather, in the area 2 of music publishing that is relevant to this case. 3 I'm not saying that Mr. Berman hasn't had a career in 4 the sound-recording industry. He has. But he does 5 not have the experience in the commissioning of music 6 for television and movie production, and that is 7 another area of music law than the one he has 8 practiced in.</p> <p>9 Finally, both Mr. Berman and Mr. Rigby have 10 been noticed for issues that relates to an 11 interpretation of the meaning of certain provisions of 12 the Sunbow agreements. And, again, as I've said 13 earlier, these are attempts by the Plaintiff to evade 14 the Court's ruling when it denied the Plaintiff's 15 motion to amend her Complaint and to sue on those 16 agreements. If she had wanted to sue on those 17 agreements, she should have done that at the outset of 18 this case, and instead she denied that there were ever 19 agreements. She has come to this point by her own 20 choosing.</p> <p>21 The interpretation of the Sunbow agreements 22 is not before the Court this week and Sunbow asks Your 23 Honor to exclude any attempt to introduce testimony 24 purporting to interpret the agreements.</p> <p>25 We'll also, just as a matter of record, renew</p>
<p>1 Rigby, who is TV Loonlands Head of Business Affairs, 2 and Carole Weitzman and David Berman. None of the 3 three witnesses has any testimony that is relevant to 4 the oral agreement that Ms. Bryant claims was made in 5 the early to mid 1980s and which was the principal 6 focus of the trial this week, and none of the issues 7 for which their testimony is noticed is relevant to 8 her alleged oral agreement.</p> <p>9 In addition, Ms. Weitzman's testimony is 10 inadmissible under CPLR 3116A because it's being 11 offered by an unsigned deposition transcript, and 12 Plaintiff has not shown that it was sent to her and 13 that she was given a 60 day opportunity to review it. 14 It's also inadmissible under CPLR 3117A because the 15 testimony isn't being used for impeachment. She isn't 16 a party and wasn't a party when the deposition was 17 taken, nor was she employed by Sunbow at the time of 18 her deposition, and the Plaintiff has not shown that 19 Ms. Weitzman is unavailable under any of the standards 20 set out in CPLR 3117A3.</p> <p>21 As for Mr. Berman, Plaintiff's expert, Sunbow 22 moves to exclude his testimony, not only because it 23 doesn't relate to the principal issue, that is -- that 24 is whether or not there was an oral agreement on which 25 he clearly has no evidence, but because he does not</p>	<p>Page 19</p> <p>1 the motions in limine that we made at the outset of 2 the trial in 2004. And then one thing I was -- kind 3 of a matter of housekeeping that I would just like to 4 confirm is that the exhibits from the framed issue 5 hearing and the transcript of that hearing are 6 considered part of our trial.</p> <p>7 THE COURT: Yes.</p> <p>8 MS. PHARES: Thank you. We had, I know, 9 proceeded that way. We marked our exhibits that way, 10 but I just wanted to make sure that would be the case.</p> <p>11 And, also, I would like to ask Your Honor, 12 there are three witnesses who are -- that are on both 13 -- that are on Sunbow's and Plaintiff's witness list, 14 and I just ask that when any witness is called, that 15 they be examined one time for all parties so that we 16 don't have to have people coming back.</p> <p>17 THE COURT: Well, that sounds reasonable.</p> <p>18 Now, has Mr. Monaghan had a chance to review 19 these motions in limine?</p> <p>20 MR. MONAGHAN: Just handed to me.</p> <p>21 THE COURT: All right.</p> <p>22 MR. MONAGHAN: Your Honor?</p> <p>23 MS. PHARES: Well, Your Honor, I should 24 say --</p> <p>25 MR. MONAGHAN: Let me just put an</p>

<p>1 objection --</p> <p>2 MS. PHARES: Excuse me.</p> <p>3 THE COURT: Hold on. Let me just -- let her</p> <p>4 finish.</p> <p>5 MS. PHARES: We couldn't actually prepare all</p> <p>6 these motions because we didn't receive Mr. Monaghan's</p> <p>7 witness list until ten minutes past five on Friday</p> <p>8 evening when he was -- when -- after you had said that</p> <p>9 you were closing up at 4:30. So, we could hardly</p> <p>10 really address these issues until after we had</p> <p>11 received that list.</p> <p>12 And then one final thing that I would just</p> <p>13 like to make sure is all right with the Court, we</p> <p>14 have, in the ensuing two years, managed to lose our</p> <p>15 copies of the Plaintiff's exhibits, and on Friday we</p> <p>16 were going to -- we were going to -- last Friday,</p> <p>17 rather, our paralegal came to copy them, and it turns</p> <p>18 out that they were not here in the courthouse because</p> <p>19 Mr. Monaghan had taken them with him. So, we would</p> <p>20 like the Court's permission to borrow them for the</p> <p>21 evening so that we may copy them, and we will bring</p> <p>22 them back tomorrow.</p> <p>23 MR. MONAGHAN: No problem.</p> <p>24 THE COURT: All right.</p> <p>25 MS. PHARES: Thank you, Your Honor.</p>	<p>Page 22</p> <p>1 contract.</p> <p>2 THE COURT: But aren't we getting in now --</p> <p>3 what I really wanted to hear from you is, I'm going to</p> <p>4 give you a chance to answer the motions in limine.</p> <p>5 Will you be able to do that by this</p> <p>6 afternoon?</p> <p>7 MR. MONAGHAN: No.</p> <p>8 THE COURT: Right after lunch or tomorrow,</p> <p>9 whenever you appear?</p> <p>10 MR. MONAGHAN: I will be able to deal with</p> <p>11 them by tomorrow.</p> <p>12 THE COURT: All right.</p> <p>13 MR. MONAGHAN: As for preliminarily say --</p> <p>14 THE COURT: No, I don't want to hear any</p> <p>15 preliminarily. I want to give you a chance to read</p> <p>16 them.</p> <p>17 MR. MONAGHAN: Okay.</p> <p>18 THE COURT: Okay. Ms. Saffer, we saved the</p> <p>19 best for last. Now you're on.</p> <p>20 MS. SAFFER: Thank you. That's the nicest</p> <p>21 introduction I think I've ever received. Thank you.</p> <p>22 You know, when we concluded the testimony</p> <p>23 back in 2004, I asked for BMI to be dismissed at that</p> <p>24 point, and Your Honor indicated that although you</p> <p>25 didn't think there was any claim against BMI, you</p>
<p>Page 23</p> <p>1 THE COURT: All right. Thank you.</p> <p>2 MR. MONAGHAN: Your Honor?</p> <p>3 THE COURT: Before Ms. Saffer -- go ahead,</p> <p>4 Mr. Monaghan.</p> <p>5 MR. MONAGHAN: Your Honor, I think what you</p> <p>6 just heard was -- was not so much an opening but</p> <p>7 preliminary to an argument and, in fact, most of an</p> <p>8 argument that had no place in an opening, Number 1.</p> <p>9 Number 2, since it was raised, let me deal</p> <p>10 with this idea of oral contract, written contract, and</p> <p>11 merger clauses; okay? A contract that has a merger</p> <p>12 clause, the merger clause relates only to the subject</p> <p>13 matter of that contract, no other contract. A merger</p> <p>14 clause dealing with Composition X does not bar any</p> <p>15 testimony about Composition Y. There is only one</p> <p>16 written agreement that is valid in this case. It is</p> <p>17 the Jem agreement.</p> <p>18 Now, Ms. Phares says, Monaghan, you should</p> <p>19 have sued on that agreement. We didn't have that</p> <p>20 agreement until Your Honor allowed them into 2004 to</p> <p>21 drop it in the middle of the trial, a year after we</p> <p>22 had demanded it. So, fair -- fairness and justice</p> <p>23 require that the Plaintiff -- and you've already found</p> <p>24 valid written contracts that Sunbow besieged you to</p> <p>25 apply to the relationship. They are stuck with the</p>	<p>Page 25</p> <p>1 would wait until the entire testimony had been</p> <p>2 finished before you ruled.</p> <p>3 BMI believed we were out of the case shortly</p> <p>4 after the end of the testimony because we thought we</p> <p>5 had reached an agreement, a settlement agreement, Your</p> <p>6 Honor was aware of that, that called for us receiving</p> <p>7 certain documents from Mr. Kinder and Mr. Bacal so</p> <p>8 that we could make switches to our records. We didn't</p> <p>9 get those agreements. In fact, we received a copy of</p> <p>10 an E-mail that Anne had sent to Dr. Kinder saying BMI</p> <p>11 wants your agreement; you don't have to give BMI</p> <p>12 anything.</p> <p>13 Notwithstanding that, this summer at his --</p> <p>14 at his deposition, he did, in fact, give us that.</p> <p>15 When we spoke on Friday, you indicated, once</p> <p>16 again, that you weren't sure why we were still in the</p> <p>17 case, to which I agreed, and you said, would it be</p> <p>18 possible for BMI to make the changes to Bacal's</p> <p>19 records so it would all be over. I looked at the</p> <p>20 settlement agreement that Ms. Bryant had reached with</p> <p>21 Mr. Bacal. I said, fine, and you said prepare an</p> <p>22 Order, and I did. And this Order instructs BMI to</p> <p>23 change its records, and when you sign it, we'll be</p> <p>24 happy to do so.</p> <p>25</p>

<p>1 (Handing to the Judge and co-counsel.)</p> <p>2</p> <p>3 THE COURT: All right. Has anyone seen this</p> <p>4 Order yet?</p> <p>5 MR. MONAGHAN: No.</p> <p>6 MS. SAFFER: No. Again this happened on</p> <p>7 Friday.</p> <p>8 THE COURT: All right.</p> <p>9 MS. SAFFER: The Order says we will make the</p> <p>10 changes Ms. Bryant requested. So, I find it hard to</p> <p>11 see how she could object, since we are giving her, in</p> <p>12 fact, what she asked for.</p> <p>13 I want to back up a little bit because I</p> <p>14 really feel it's necessary to address the points that</p> <p>15 were made in the opening by Mr. Monaghan.</p> <p>16 If you look at the original Complaint filed</p> <p>17 in this case, it alleged that BMI is guilty of having</p> <p>18 participated in a fraud and not fulfilling our fiduciary</p> <p>19 duties, because Mr. Kinder had made changes to the</p> <p>20 records, fraudulently and BMI had acquiesced to those</p> <p>21 changes. We indicated that we had never changed any</p> <p>22 of our records as a result of instructions from Mr.</p> <p>23 Ford.</p> <p>24 Subsequently, Ms. Bryant, Mr. Ford, reached a</p> <p>25 settlement agreement. Mr. Ford's testimony, as you</p>	<p>1 BMIs not the Judge. You're the Judge. You</p> <p>2 determine what her interests may be. We follow the</p> <p>3 instructions given by a Court. We're not a Judge,</p> <p>4 we're not a jury. We are -- our practice is, as Ms.</p> <p>5 Bryant is aware, and as she testified, and as a BMI</p> <p>6 witness will testify if we have to go forward, to</p> <p>7 receive these registrations, these cue sheets, from</p> <p>8 the people who make the programs. Whatever they tell</p> <p>9 us is what we put down. If they change the music, if</p> <p>10 they substitute music, if they hire somebody to make</p> <p>11 an arrangement and decide that the shares should be</p> <p>12 different, that's what we follow. We don't make any</p> <p>13 independent evaluation. We don't determine one</p> <p>14 person's rights vis-a-vis another person's rights.</p> <p>15 And, furthermore, when we get a registration,</p> <p>16 we have no way of knowing what that represents. We</p> <p>17 have hundreds of thousands of musical compositions.</p> <p>18 Titles are not protected by copyright. If Paul Lennon</p> <p>19 wrote -- excuse me -- Paul Lennon -- John -- excuse</p> <p>20 me -- John Lennon wrote Yesterday. If I turn around</p> <p>21 and I write a song, and I call it Yesterday, and I</p> <p>22 register it with BMI, they'll take it. They won't</p> <p>23 credit me with his song if his song is reported</p> <p>24 because it will say John Lennon's Yesterday. It won't</p> <p>25 say Judy Saffer's yesterday. But, otherwise, they</p>
<p>1 will hear in deposition, said he never changed any of</p> <p>2 his registrations.</p> <p>3 There is no evidence whatsoever that BMI ever</p> <p>4 changed a single record pertaining to Ms. Bryant.</p> <p>5 There was original testimony that there was confusion</p> <p>6 over the dates. It became clear that the date</p> <p>7 indicated on the registration, 1993 was a date in</p> <p>8 which we changed our computer records, and, so,</p> <p>9 everything got in 1993 date, if it had been registered</p> <p>10 earlier, but the substance didn't get changed. And</p> <p>11 the difficulty is apparently that Ms. Bryant is</p> <p>12 disturbed that she's not being credited correctly or</p> <p>13 fully for music that she wrote.</p> <p>14 It's not my place to opine on that. That may</p> <p>15 be true, that may not be true, I don't know, and, I</p> <p>16 say, I, on behalf of BMI, BMI doesn't know. There is</p> <p>17 no way BMI can know those things.</p> <p>18 Ms. Bryant's attorney points to a paragraph</p> <p>19 in the affiliation agreement and says in Paragraph 11</p> <p>20 that that obligates BMI to look out for her interest.</p> <p>21 And the response that I had is that if you look at the</p> <p>22 language, it, first of all, gives BMI a right not an</p> <p>23 obligation. Second of all, it would mean that BMI</p> <p>24 would have to favor Ms. Bryant over Mr. Kinder, Mr.</p> <p>25 Bacal, hundreds of thousands of other writers.</p>	<p>1 don't know; BMI can't know.</p> <p>2 The burden and the expectation that is being</p> <p>3 put upon BMI is totally unrealistic. No court has</p> <p>4 ever found that BMI has an independent fiduciary duty</p> <p>5 to each writer and each publisher. We have a</p> <p>6 contractual obligation to do our best to pay them the</p> <p>7 royalties that come to us.</p> <p>8 As Mr. Monaghan said and admitted just this</p> <p>9 morning, he's not alleging that we kept any money. If</p> <p>10 we paid money to Ford Kinder that should have gone to</p> <p>11 Anne by her evaluation, she should get that money from</p> <p>12 Ford Kinder.</p> <p>13 She, in fact, testified during the course of</p> <p>14 her trial that a lot of registrations were made by Mr.</p> <p>15 Dobishinski, who was her attorney and her</p> <p>16 representative and she and Ford were partners and they</p> <p>17 shared. We write checks based upon what's written on</p> <p>18 the registration. If she and Mr. Kinder choose to</p> <p>19 share, divide it up, whatever they want to do, it's</p> <p>20 their business.</p> <p>21 The rights that were granted to BMI, in her</p> <p>22 contract to BMI, and every writers contract to BMI,</p> <p>23 authorizes BMI to license their music for public</p> <p>24 performance to people who use music. We're not</p> <p>25 involved in mechanicals. We're not involved in any</p>

<p>1 other portion of the rights, only the performance on 2 media like radio, television, whatever it may be or 3 even ring tones, as Your Honor pointed out. And, in 4 fact, Ms. Bryant has received money from BMI for ring 5 tones.</p> <p>6 BMI shouldn't be in this case. BMI -- there 7 has been no -- not a scintilla of proof at all that 8 BMI has participated in any wrongdoing. We make up 9 nothing. We change nothing. If new registrations 10 came in from a new production company, that, in fact, 11 didn't properly credit Ms. Bryant, her lawyer has 12 every opportunity to go and sue the production 13 company, as, in fact, he has sued Sunbow. It's not 14 BMI's role. Our role is simply to license her work on 15 her behalf, which we do to the best of our ability.</p> <p>16 I sincerely hope once again you will consider 17 dismissing BMI from this litigation.</p> <p>18 THE COURT: All right. Just a moment.</p> <p>19 You've heard Mr. Monaghan say that Ms. Bryant 20 only gets 8% of the royalties that she claims she is 21 entitled to for transformers.</p> <p>22 Now, would you know where the rest of those 23 royalties went?</p> <p>24 MS. SAFFER: If -- wherever it is that said 25 that she got eight-and-a-half percent, or whatever,</p>	<p>Page 30</p> <p>1 MR. MONAGHAN: I thought you said, ad 2 nauseam, no more motions, and here I am -- 3 THE COURT: Well, in limines, I can see 4 motions in limine before you start a trial.</p> <p>5 MR. MONAGHAN: Yes, I understand, Judge, but 6 we've known about the trial for months and months. 7 Couldn't they have served these motions --</p> <p>8 THE COURT: Well, I understand. I'm not 9 making excuses for anybody, but I'm going to take the 10 motions and read them, as I have everything else.</p> <p>11 You notice my glasses have been getting 12 bigger since this trial started, and I'm not blaming 13 anybody for it.</p> <p>14 One thing I want to tell you, a slight change 15 in plans. At the present time we're not having court 16 tomorrow morning until 2:00 in the afternoon, at which 17 time you have until 5:00 to finish up that deposition, 18 whatever you want us to see.</p> <p>19 Wednesday we have a full day.</p> <p>20 Thursday, unfortunately, I have a hospital 21 appointment at 8:00 o'clock in the morning and I will 22 not be out of that until the next day. So, I arranged 23 us to have next Monday as a fill-in for Thursday. So, 24 there won't be any court on Thursday, but there will 25 be court next Monday. We may even go over until</p>
<p>Page 31</p> <p>1 lists the other writers that were credited with the 2 remaining percentages. We didn't set up that 3 percentage. The production company did, the people 4 who use the music.</p> <p>5 Your Honor, it may very well be that all of 6 the music out there, with -- on the transformer show 7 has, at its very basis, work written by Anne Bryant. 8 I don't know. I'm not a musicologist. But the 9 copyright law says that the copyright owner has the 10 right to make changes, adaptations, arrangements, and 11 how they then credit people, if they decide her 12 contribution is worth 8% or 50%, I don't know. I take 13 what they give me because they own the copyright and 14 they have the right to make that evaluation.</p> <p>15 THE COURT: So, if Sunbow owns the copyright, 16 Sunbow gets to decide who gets what percentage?</p> <p>17 MS. SAFFER: Correct, correct.</p> <p>18 THE COURT: All right.</p> <p>19 All right. I thank you all. Rather than put 20 Ms. Bryant on the stand right now and then take a 21 break in a few minutes from now, we're going to take a 22 ten minute break. I'll see you back here at a little 23 after 11:00 o'clock.</p> <p>24 MR. MONAGHAN: One quick question, Judge.</p> <p>25 THE COURT: Yes?</p>	<p>Page 33</p> <p>1 Tuesday if I can get that cleared off.</p> <p>2 MR. MONAGHAN: Okay, Judge.</p> <p>3 THE COURT: Okay. Have a break. See you in 4 a few minutes.</p> <p>5</p> <p>6 (Whereupon a recess was taken at 7 approximately 10:55 A.M.)</p> <p>8 (Court reconvened at approximately 11:15 A.M.)</p> <p>9</p> <p>10 THE COURT: Let us have Ms. Bryant back on 11 the stand.</p> <p>12 MS. SAFFER: Excuse me. Before we get into 13 substance, we're a little confused on calendar and the 14 like.</p> <p>15 THE COURT: Okay.</p> <p>16 MS. SAFFER: Because we thought this would 17 end this week, I have scheduled some stuff for Tuesday 18 and Thursday of next week. Monday is okay for me.</p> <p>19 THE COURT: All right.</p> <p>20 MS. SAFFER: Just trying to -- you will be -- 21 we will be resuming on Friday?</p> <p>22 THE COURT: Right.</p> <p>23 MS. SAFFER: Friday, and then ...</p> <p>24 THE COURT: Monday.</p> <p>25 MS. SAFFER: Monday; okay. We're just</p>

<p>1 clarifying. Thank you very much. 2 THE COURT: Sure. 3 Yes, please. 4 5 (Whereupon the Plaintiff, Anne Bryant, 6 resumes the witness stand.) 7 8 THE WITNESS: How are you? 9 THE COURT: Good. It's been a while; but 10 you're still under oath. It stays with you forever. 11 THE WITNESS: All right. 12 THE COURT: All right. We're back on 13 Cross-examination. Go ahead. 14 MS. PHARES: We are back on Cross- 15 examination, but our case has sort of changed a little 16 bit, so ... 17 THE COURT: All right. 18 MS. PHARES: So, I would like to begin, Your 19 Honor, partly to orient us, and -- and also I hope to 20 save some time is to offer two admissions, documents 21 as admissions. The first is Defendant's Exhibit Y 22 that we're offering for identification, is Page 32 23 from our trial date of July 9, 2004, and the -- the 24 testimony, it relates to -- relating to Ms. Bryant's 25 testimony that she does not contend that Sunbow has</p>	<p>Page 34</p>	<p>1 there's no doubt, but why would you just offer a 2 portion of testimony? It's not something -- 3 THE COURT: Well, supposedly it's an 4 admission. 5 MR. MONAGHAN: It is as it is. I mean, we 6 can't complain about the testimony. 7 I guess I have no objection. 8 THE COURT: All right. 9 Ms. Saffer? 10 MS. SAFFER: No objection, Your Honor. 11 THE COURT: All right it's accepted into 12 evidence. 13 14 (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF 15 TRIAL TRANSCRIPT FROM JULY 9, 2004 - 16 RECEIVED IN EVIDENCE.) 17 18 MS. PHARES: And then, Your Honor, I'm also 19 offering as -- 20 THE COURT: Maybe so that the record is 21 clear, read what you claim is the admission. 22 MS. PHARES: And the admission is: And you 23 don't have a dispute -- hang on; let's see. 24 "All right. Now, if you turn to the writer's 25 share, turn to the writer's share of this" -- and this</p>	<p>Page 36</p>
<p>1 received any of the performance royalties from BMI 2 that were due to her. And I'll offer it for 3 identification. 4 THE COURT: All right. Has it already been 5 marked? 6 MS. PHARES: We've put a sticker on it, but 7 it has not been. 8 THE COURT: And it is "X", did you say? 9 MS. PHARES: It's Y. 10 THE COURT: Y. 11 12 (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF 13 TRIAL TRANSCRIPT FROM JULY 9, 2004 - 14 MARKED FOR IDENTIFICATION.) 15 16 MS. PHARES: And I think we have a copy for 17 Your Honor as well. 18 THE COURT: Okay. 19 MS. PHARES: The front page is just for 20 identification, and this is -- do you have an 21 objection to it, Pat. 22 MR. MONAGHAN: I haven't seen it yet. 23 MS. PHARES: I'm sorry. 24 MR. MONAGHAN: I don't think it's something 25 that is normally an exhibit. It's part of the record,</p>	<p>Page 35</p>	<p>1 was -- I was pointing to our easel, if you remember -- 2 "you're not saying, are you, that BMI paid any part of 3 the writer's share to Sunbow, are you, or to its 4 publishing companies? 5 "No. 6 "Okay. So, you're okay with this and nothing 7 was paid to Sunbow. 8 "Nothing that I know of." 9 And then Mr. Monaghan confirms, "I just want 10 to make sure we're talking about public performance 11 royalties." And I agree with him, "public performance 12 royalties is all that's at issue here." 13 THE COURT: All right. Thank you. 14 MS. PHARES: All right. And then, Your 15 Honor, I'd like to offer as an admission Ms. Bryant's 16 affidavit dated December 6, 2005. This is the -- this 17 is the affidavit that she submitted in support of her 18 motion to amend her Complaint. And we have marked 19 this as Defendant's Exhibit Z. 20 21 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT 22 OF ANNE BRYANT DATED 12/6/05 - MARKED 23 FOR IDENTIFICATION.) 24 25 THE WITNESS: We can't have any more. End of</p>	<p>Page 37</p>

<p>1 the alphabet.</p> <p>2 MS. PHARES: Oh, we can double up. We're</p> <p>3 really clever.</p> <p>4 MR. MONAGHAN: What's the date on the</p> <p>5 affidavit again?</p> <p>6 MS. PHARES: December 6, 2005.</p> <p>7 Specifically, if you're asking for the</p> <p>8 particular language that we're referring to, it is on</p> <p>9 Page 5 to 6, and it is specifically the Footnote 3.</p> <p>10 "Although this is the Jem feature song</p> <p>11 agreement, not the Jem theme song agreement, I have</p> <p>12 accepted it as stating the terms of my Sunbow</p> <p>13 agreements with Jules and Joe Bacal and Sunbow</p> <p>14 agreements related to Sunbow Productions."</p> <p>15 THE COURT: All right.</p> <p>16 Mr. Monaghan?</p> <p>17 MR. MONAGHAN: No objection.</p> <p>18 THE COURT: All right. It's in evidence.</p> <p>19</p> <p>20 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT OF ANNE</p> <p>21 BRYANT DATED 12/6/05 - RECEIVED IN EVIDENCE.)</p> <p>22</p> <p>23 MR. MONAGHAN: Do we have exhibits</p> <p>24 in-between, all the way through?</p> <p>25 MS. PHARES: Uh-huh.</p>	Page 38	Page 40
	Page 39	Page 41

		Page 42		
1	5, 1985, isn't it?		1	they were involved in some Griffen Bacal agreements, too. So, we didn't discuss all of them.
2	MR. MONAGHAN: June 1st.		2	MS. PHARES: Your Honor, I'm going to make an objection and please ask that the witness be instructed just to answer the question that I have asked.
3	Q. June 1, 1985. Isn't it?		3	THE COURT: Well, that will move things along.
4	A. Yeah, we inserted this date here.		4	THE WITNESS: I understand, but, I mean, it's --
5	Q. The year date is 1985, isn't it?		5	MS. PHARES: It will.
6	A. Right. This is back-dated.		6	THE WITNESS: Sometimes you just can't say yes or no.
7	Q. I'm just -- I'm just asking a question, all right?		7	THE COURT: Well, I agree with you. And we've been through this. If you're asked a yes or no question, the answers are yes, no, or, I can't answer it that way.
8	A. Okay.		8	THE WITNESS: I can't answer it that way. That's a new one. I like that. Thank you.
9	Q. And that's -- that's the only one I need you to answer, Ms. Bryant.		9	Okay. And after you discussed the Sunbow agreements with Mr. Ford -- I mean with Mr. Kinder, you signed them, didn't you?
10	A. All right.		10	We mutually agreed to sign them. We signed them, yeah.
11	Q. In your -- in your December 2005 affidavit, that's the Defendant's Exhibit Z, we were just looking at --		11	Would you please turn to Page 10 --
12	A. Yeah.			
13	Q. -- on Page 5, your date is 1986. That's a typo, isn't it?			
14	A. Well, I don't know if it's a typo, Mrs. Phares, because I can't recall whether this says 1985 or 1986. And I know by all the correspondence and by the fact that we negotiated this agreement for a couple of years that we didn't sign it until 1987 or so, and they -- they asked us to insert a back date, and I don't know which back-date it was.			
15	Q. I'm just asking you: What is the date on the top of the agreement that you signed?			

		Page 43			Page 45
1	A. Okay. It's either June 1, 1985, or it's June 1 1986.		1	A. Oh, this one.	
2	Q. And because you can see a 6 there?		2	Q. -- of Exhibit M?	
3	A. Is that a five or a six?		3	A. I don't remember signing any other agreements, though. I remember this one.	
4	Q. You mean you don't know?		4	Q. Have you got Page 10 in front of you?	
5	A. Yeah. What I do know is it wasn't signed until 1987, so...		5	A. Yes.	
6	Q. I'm not asking you when it was signed. I asked you what is the date at the top of the agreement.		6	Q. Do you see a paragraph that begins with a lower case C in parentheses?	
7	A. Okay. I'm not sure.		7	A. Yes.	
8	Q. Okay.		8	Q. Doesn't that paragraph say this agreement contains the entire understanding of the parties hereto, relating to the subject matter herein contained, and this agreement cannot be changed, rescinded, or terminated orally?	
9	A. You told me I could say that; right?		9	A. Yes, I see that.	
10	Q. Fine.		10	Q. That provision means that the agreement cannot be changed with an oral agreement, doesn't it?	
11	THE COURT: Yeah.		11	A. Yes.	
12	A. I'm not sure if that's a five or a six. I know it was signed way later.		12	Q. Kinder and Bryant signed this agreement, didn't it?	
13	Q. And you always discussed the Sunbow agreements with Ford Kinder, didn't you?		13	A. Yes.	
14	A. This one we certainly did.		14	Q. Okay. But you're still claiming that you have an oral agreement with Sunbow; is that correct?	
15	Q. Did you discuss all the agreements with Ford Kinder?		15	A. I'm saying that an oral agreement preceded this agreement, not that it followed this agreement. It preceded this agreement, as it did with everything we	
16	A. We work -- when we worked for Griffen Bacal, we had pretty much the way we worked together --				
17	Q. I'm just talking about Sunbow.				
18	A. Then I would say, yes, all Sunbow agreements were --				
19	Q. were discussed with -- by me and Ford and that -- that all of the Sunbow interest in the Griffen Bacal's --				

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1	did for Tom and Joe and --	1	question had inherent in it, how is it you're asking
2	Q. An oral agreement with Sunbow. You're saying that you	2	for royalties which --
3	have -- I just want to -- I just want to make sure.	3	THE COURT: Okay. I'll tell you what, as to
4	You're contending that you have an oral	4	form, I'll sustain the objection.
5	agreement with Sunbow that preceded this written	5	Ask the question again.
6	agreement; is that correct?	6	Q. All right. How does an oral agreement with Sunbow
7	A. Yes, that's the way we get our jobs. They lay it out	7	co-exist with that statement in the agreement you
8	for us orally, and then if it goes final, it becomes a	8	signed?
9	written contract.	9	A. The oral agreement was a rough layout of the terms,
10	Q. Okay. And would you please turn to Page -- to Page 6	10	the basic terms that -- that laid out our
11	of the agreement?	11	compensation, how we would be paid and how -- what
12	A. Yes, Ma'am.	12	Sunbow needed to acquire. That's what the basic terms
13	Q. Okay. This is the continuation of Section 6A, which	13	of all working for in my industry begin with a phone
14	begins on Page 4 and 5, that sets out when Sunbow	14	call; here's the terms, and if it even lives long
15	agrees to pay publishing royalties to Kinder and	15	enough to go a written agreement, then it's hashed out
16	Bryant; isn't that right?	16	with more detail.
17	A. This -- this is about where they won't pay royalties,	17	So, nobody said anything about using the
18	isn't it?	18	music hereinabove over the phone call. They said, you
19	Q. The whole section relates to publishing royalties; is	19	get the royalties, we need the copyright. If we
20	that correct?	20	choose your song, if it goes to final -- there are a
21	A. Yes, that's good; right.	21	lot of ifs. This is a competition with ten different
22	Q. Okay. And isn't it true that the first two-and-a-half	22	people writing on it. It's not a work for hire until
23	lines on Page 6 state: No royalty shall be payable	23	I say it's a work for hire. It's all orally done.
24	hereunder for professional material not sold or	24	That's -- the whole industry works that way, and they
25	resold. Further, no royalty shall be payable to	25	don't make up ten contracts for people -- nine of whom
	Page 47		Page 49
1	writer with respect to uses of the -- Capital M --	1	are going to lose.
2	Music, except as hereinabove expressly set forth.	2	So, I don't think that my -- my oral contract
3	Is that correct?	3	said, this is how much money we'll get. You'll get
4	A. Yes.	4	your royalties. My writer's royalties were always
5	Q. Okay. So, how does an oral agreement with Sunbow for	5	reserved. Those basic things were laid out in the
6	royalties that exceed this agreement co-exist with a	6	oral agreement before we said, okay, we'll take a
7	statement in the agreement you signed?	7	crack at it.
8	MR. MONAGHAN: Object to the form of that	8	And that's all it is. It's a simple sketch-
9	question. Presupposes a whole issue that hasn't even	9	out of the basic terms.
10	been addressed, and there's no foundation for this.	10	Q. All right; fine. Now, I'm going to hand you two
11	THE COURT: Well, the witness has testified,	11	documents that are already an exhibit, Defendant's
12	as I take it, that there was an oral agreement that	12	Exhibit J and O (handing.)
13	probably, as I understand it, was part of the	13	MR. MONAGHAN: Can you identify those for the
14	negotiations that are going back and forth, and	14	record, please?
15	eventually that became M.	15	MS. PHARES: Yes. The first is a letter from
16	THE WITNESS: That's right.	16	Mr. Dobishinski to Carole Weitzman relating to the
17	THE COURT: So, I don't know that there's	17	amendment of the Jem agreement.
18	anything wrong --	18	A. O, and what?
19	THE WITNESS: Everything we did --	19	Q. I beg your pardon?
20	THE COURT: -- with the question.	20	A. Which do you want?
21	MR. MONAGHAN: My problem with the question	21	Q. That's J?
22	is that there's part of it that's saying, how is it	22	A. You want J?
23	that you're asking for royalties that exceed. We	23	Q. And O.
24	haven't even -- we haven't even gone there yet.	24	A. Okay.
25	There's been no foundation for any of that. That	25	Q. So, first, looking at Exhibit J, when Kinder and

<p style="text-align: right;">Page 50</p> <p>1 Bryant wanted an amendment to the Jem agreement, Mr. 2 Dobishinski wrote to Sunbow and proposed it, didn't 3 he?</p> <p>4 A. I don't know whether he wrote to them or not. 5 Is that here?</p> <p>6 Q. Are you looking at Exhibit J?</p> <p>7 A. I was looking at O. Okay. Giving me two things at 8 once.</p> <p>9 Q. Right. And I asked you, let's look first at Exhibit 10 J. And I'm saying: So, when Kinder and Bryant wanted 11 to amend the Jem agreement, Mr. Dobishinski wrote to 12 Sunbow and proposed it, didn't he?</p> <p>13 A. I don't see that he wrote to Sunbow. He wrote to us. 14 Did he write to Sunbow? 15 Yeah; Carole. Here it is on the back. Let 16 me see. 17 He copied somebody. He copied everybody.</p> <p>18 Q. So, Ms. Bryant, let's do this this way.</p> <p>19 A. Yeah.</p> <p>20 Q. The front of it -- let's do it page by -- the front of 21 this is -- this is a letter from Mr. Dobishinski to 22 Carole Weitzman; correct?</p> <p>23 A. Yes. Oh, there, I see it.</p> <p>24 Q. And he copied you on it; is that correct?</p> <p>25 A. And he copied us on it.</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. PHARES: It is in evidence. 2 MR. MONAGHAN: I don't know how it would have 3 gotten in evidence. It's not signed. 4 THE COURT: Well, I refer to the Court 5 Reporter.</p> <p>6 (Off the record discussion.)</p> <p>7 MR. MONAGHAN: I'm going to ask that they be 8 stricken. There's just no basis for these getting in. 9 Ms. Weitzman wasn't here. They're unsigned. Maybe I 10 missed the ball at the last hearing, but they 11 shouldn't be in evidence.</p> <p>12 MS. PHARES: Your Honor, this document has a 13 word, name Bill written in hand after the name Mr. 14 Dobishinski on the front line, and he is sending two 15 proposed amendments. They would not be signed because 16 they haven't been accepted yet.</p> <p>17 THE COURT: Well, it's still in evidence.</p> <p>18 MS. PHARES: Right.</p> <p>19 THE COURT: You can't knock things out of 20 evidence now. You get a chance to argue when it comes 21 in, not when it's in.</p> <p>22 Let's go ahead.</p> <p>23 MS. PHARES: All right.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And the first page of it is Revised Amendment, dated 2 March 15, 1986, of Agreement dated June 1, 1985, 3 between Sunbow Productions, Inc., and Kinder and 4 Bryant Limited.</p> <p>5 A. Right.</p> <p>6 Q. And, two, red line copy of the arrived Revised 7 Amendment; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then when you turn to Page 2, do you see a red 10 line copy of the amendment?</p> <p>11 A. I assume it's red, yeah.</p> <p>12 Q. Well, it has underline --</p> <p>13 A. Underlined is true, but --</p> <p>14 Q. -- not red.</p> <p>15 A. -- that's because it's a photocopy.</p> <p>16 Q. And then if you turn to the page that has a -- the 17 production number at the bottom SUN 0400, that is the 18 clean copy of that amendment; isn't it?</p> <p>19 A. It looks like it. I'm assuming that it is. You read 20 it; right?</p> <p>21 MR. MONAGHAN: You know, Your Honor, if I 22 may?</p> <p>23 A. Can I --</p> <p>24 MR. MONAGHAN: I'm trying to see if this is 25 in evidence, this exhibit.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Now, Ms. Bryant, if you look at Exhibit O. Ms. 2 Bryant?</p> <p>3 A. Yeah.</p> <p>4 Q. Is this not the amendment to the Jem agreement signed 5 by Mr. Kinder and Carole Weitzman?</p> <p>6 A. Let me just make sure of that. This is part of what 7 was two years ago.</p> <p>8 Yes, this appears to be that.</p> <p>9 Q. All right. So, when Kinder and Bryant wanted to amend 10 the Jem agreement, it knew that it had to be in 11 writing, didn't it?</p> <p>12 A. Yes.</p> <p>13 Q. And when Kinder and Bryant wanted to amend the Jem 14 agreement, it knew how to do it; didn't it?</p> <p>15 A. I don't know what that question means. I don't 16 understand the question. You mean in writing?</p> <p>17 Q. Yes.</p> <p>18 A. Yeah.</p> <p>19 Q. It knew the procedure. It wrote, it proposed 20 something, and then it was finally put into writing; 21 is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, you've testified earlier in this trial 24 about an oral understanding that Kinder and Bryant 25 claims that it had with Joe Bacal in 1984, when Kinder</p>

<p style="text-align: right;">Page 54</p> <p>1 and Bryant first started working with GBI; is that 2 right?</p> <p>3 A. Right.</p> <p>4 Q. And you've testified that the oral agreement was based 5 on some earlier agreements between Michelin Co. and 6 GBI; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So, am I correct that you're saying that when you and 9 Ford Kinder started Kinder and Bryant in 1983, you had 10 the same agreement with GBI that Michelin Co. had had 11 with GBI?</p> <p>12 A. It was very -- a hand shake, rough, you know, same 13 basic principles that we always worked under, yeah.</p> <p>14 Q. Is it a yes or a no?</p> <p>15 A. Well, I don't know to say that the exact ink on -- on 16 the Michelin Company and ours was the same. I mean, 17 time went by. Rates went up, prices went up, you 18 know.</p> <p>19 Q. In 1983; or, actually, you testified you did this in 20 '84.</p> <p>21 A. Yes.</p> <p>22 Q. And it was the same agreement, essentially?</p> <p>23 A. On principle it was the same agreement. We kept our 24 royalties. We got a creative fee. They got the 25 copyright because they needed the copyright. It was</p>	<p>1 Q. Are you saying you did not do -- you didn't have an 2 agreement with Sunbow with -- relating to 3 transformers?</p> <p>4 A. I don't know. I don't remember that.</p> <p>5 Q. You don't know that you didn't have one?</p> <p>6 A. I know I had certain pieces of paper that -- that -- 7 that were related to that.</p> <p>8 Q. I am talking about agreements with Sunbow.</p> <p>9 A. I don't know. I don't -- I don't have them, and I 10 wish you did.</p> <p>11 Q. But you have agreed that the Jem agreement is the form 12 of agreement that governed all your relationships with 13 Sunbow. That was what you stated in your affidavit, 14 that is what the Court found in his decision on June 15 15th at the end of the framed -- ruling on the framed 16 issue hearing. That's -- that's your testimony; is 17 that correct?</p> <p>18 A. Yes. And all of the -- the agreements with Sunbow's 19 Productions all track with this agreement.</p> <p>20 Q. So, I am asking you: Are you contending whether -- 21 that you also have a written -- an oral agreement in 22 addition to your written agreements with Sunbow?</p> <p>23 A. No. I'm saying that all -- all the jobs I got from 24 GBI, Sunbow, anybody involved in -- in that double 25 company, all of them came to me as all my jobs today</p>
<p style="text-align: right;">Page 55</p> <p>1 just the same structure, and it's the way I work with 2 everybody.</p> <p>3 Q. All right. Now, is it correct that you're contending 4 that Kinder and Bryant also had an oral agreement with 5 Sunbow, in addition to the written agreement that 6 Kinder and Bryant signed with Sunbow for each of the 7 TV series?</p> <p>8 A. Well, we only did one original TV series. The others 9 were just taken from the Sunbow library and used for 10 their other TV series. We only did one, Mrs. Phares.</p> <p>11 Q. You have named several productions that were done for 12 Sunbow as part of your Complaint; correct? Those are 13 the agreements that I'm talking about.</p> <p>14 A. Could you help me out by telling me what you're 15 talking about? Are you talking about the Jem show? 16 That was contracted with Jem.</p> <p>17 Q. I'm talking about all of the productions that you told 18 Justice O'Rourke that you were suing on on the first 19 day of trial.</p> <p>20 A. The transformers, we did not do the television show. 21 They simply took their Sunbow library of music and 22 used it in the transformers TV show and on all their 23 products. They were the common publisher between 24 Griffen Bacal and Sunbow Productions. I mean, 25 anything that was listed --</p>	<p style="text-align: right;">Page 57</p> <p>1 come to me, on spec, with the terms being given 2 orally. That's how the industry runs. Later on, 3 those terms are fleshed out in a written contract if 4 lightening strikes and something goes on the air.</p> <p>5 Q. So, you're saying that if there was later a written 6 contract on one of those speculative offers, that then 7 the only thing that governs is the written agreement; 8 is that what you're saying?</p> <p>9 A. Yes, there's nothing about the oral agreement that was 10 more than the written agreement. It was the basis of 11 the written agreement. That's what I'm saying.</p> <p>12 MS. PHARES: Well, Your Honor, on the basis 13 of that, it seems to me that I am going to make a 14 motion for a directed verdict right now, because the 15 Court has already found that the Sunbow agreements 16 governed all of her relationships. They have a merger 17 clause in them. She apparently is conceding that any 18 prior oral agreement was merged into them; and we're 19 done.</p> <p>20 THE COURT: Mr. Monaghan?</p> <p>21 MR. MONAGHAN: That's easy. The Jem 22 agreement that was just inquired about relates to a 23 particular subject matter. The particular subject 24 matter were the feature songs for the shows. Does not 25 cover, does not describe the subject matter as</p>

<p>1 anything other than that. Doesn't describe 2 transformers, doesn't identify the Jem themes, which 3 are the more valuable property. So that the merger 4 clause, which I don't know why counsel keeps stressing 5 it, can only relate to that particular composition. 6 That merger clause in the Jem agreement can only 7 relate to the -- the feature songs and -- and what it 8 says is, we cannot have an oral agreement that 9 contravenes this written agreement about the subject 10 matter, the feature songs. So, we're still here, and 11 we're still going to continue our trial because -- 12 THE COURT: Hold on. 13 Is it -- now, your client has testified that 14 there could be oral agreements beforehand and 15 generally were, and then they would be incorporated 16 into a written final agreement. 17 MR. MONAGHAN: Correct. 18 THE WITNESS: Uh-huh. 19 THE COURT: Is that your position? 20 MR. MONAGHAN: That's her testimony, 21 regardless of my position. 22 THE COURT: Okay. So, then, and this Court 23 has found sufficient evidence to say that this 24 happened in all the cases. 25 Now, I understood that we were going to have</p>	<p>Page 58</p> <p>1 exactly what was going on before the Jem agreement was 2 produced in 2004. We didn't know whether it was 3 signed or not. 4 I mean, I don't understand a position that 5 says, please, Judge, apply this written agreement, the 6 Jem agreement, to all of the relationships between the 7 parties, and then says on the other hand, no, don't 8 apply it to all of the other relationships. 9 MS. PHARES: Your Honor -- 10 THE COURT: No, I have said I am applying it 11 to all relationships. 12 MR. MONAGHAN: We would ask you to do so. 13 And the merger clause, again, does not bar any 14 testimony as to the other agreements. It's a merger 15 clause as to -- 16 THE COURT: Listen, if -- if there was a 17 contract like M on Jems for every piece of work done 18 by the Plaintiff, then everyone of them had a merger 19 clause in it -- 20 MR. MONAGHAN: Right. 21 THE COURT: -- and, so, in order to change 22 that, you would have needed a writing. 23 MR. MONAGHAN: Agreed. 24 THE COURT: Okay. Now -- 25 MR. MONAGHAN: No dispute.</p>
<p>1 some evidence that there were other oral agreements as 2 to -- as to some of the songs that -- or musical 3 pieces that were done by the Plaintiff that you're 4 going to introduce in this case. Are you? 5 MR. MONAGHAN: We're going to introduce, 6 because we do not have a written agreement, we do not 7 have written agreements as to, Judge, these other 8 compositions. So that, in order for the Court to 9 apply the Jem agreement concept of royalties, 10 reservation of royalties, there must be a foundation 11 that that was the agreement that applied to the other 12 compositions. 13 You have found, but you did not identify in 14 your opinion, Judge, which agreements you found to be 15 valid and binding. The transformers agreement that 16 was submitted is not valid and binding. It is still 17 challenged. 18 THE COURT: Your client stated she doesn't 19 even know if there was a written agreement on 20 transformers. 21 THE WITNESS: It was with Griffen Bacal 22 initially, but that wasn't it because that's not our 23 agreement. 24 THE COURT: All right. 25 MR. MONAGHAN: That's true, Judge, and that's</p>	<p>Page 59</p> <p>1 Page 61</p> <p>1 THE COURT: Now, counsel says, well, that's 2 the end of their case because there is no proof at all 3 about written agreements or -- excuse me -- oral 4 agreements that superseded or in any way changed the 5 written agreements. 6 MR. MONAGHAN: I'm actually very puzzled, 7 Your Honor. A merger clause does not bar any other 8 composition. 9 THE COURT: Yeah, but we're going on the 10 assumption that everyone had a contract that had a 11 merger clause, what are you going to prove about oral 12 contracts, then? 13 MR. MONAGHAN: We're going to prove, and 14 proof that's probably half-way or three-quarters of 15 the way there, that the Jem royalty provisions in 16 Exhibit M apply to each of the other compositions, 17 including transformers. 18 You actually found that, I think, already. 19 MS. PHARES: Your Honor, you have already 20 found that these agreements apply. What Mr. Monaghan 21 wants you -- is trying now to do is just what I had 22 predicted. He is trying to evade the fact that you 23 have already denied an amendment to the Complaint for 24 us to start this case over again, on a breach of 25 contract on the written agreements. And that is not</p>

<p style="text-align: right;">Page 62</p> <p>1 in this case, and, apparently, neither is an oral 2 agreement that we all thought was going to be proved. 3 And, as we understand it, and which is what we had 4 thought before, is that there are written agreements. 5 They all have merger clauses. Ms. Bryant is now 6 saying that any oral agreement she made was turned 7 into a written agreement which had a merger clause. 8 We do not understand how this case can 9 continue.</p> <p>10 MR. MONAGHAN: Well, very simply, even as to 11 the Jem written agreement we have, it provides for 12 royalties and accountings. So, if we just isolate 13 that agreement, we have --</p> <p>14 MS. PHARES: The agreement --</p> <p>15 MR. MONAGHAN: Excuse me one second.</p> <p>16 MS. PHARES: We -- you were denied a motion 17 to amend to sue on that agreement.</p> <p>18 MR. MONAGHAN: The agreement is in the case, 19 Your Honor. We haven't gone six years, had it 20 produced in the middle of trial, had motions galore, 21 and have it introduced in evidence by counsel.</p> <p>22 MS. PHARES: To prove that there was no oral 23 agreement. That was the purpose.</p> <p>24 MR. MONAGHAN: It's in for all purposes --</p> <p>25 MS. PHARES: No, it is not.</p>	<p>1 either or proposition.</p> <p>2 THE COURT: Sure it is. Your client said 3 that there was a time, with each of these things, when 4 it was orally discussed, and then eventually it would 5 be incorporated, all of the things that were orally 6 discussed, into a written contract.</p> <p>7 MR. MONAGHAN: Right.</p> <p>8 THE WITNESS: Can I say something?</p> <p>9 MR. MONAGHAN: No.</p> <p>10 THE COURT: Just a minute.</p> <p>11 All right. So, now, what is it about oral 12 contracts that you want this Court to know, other than 13 what your client has testified to?</p> <p>14 MR. MONAGHAN: I want this Court to apply the 15 written agreement, the Jem agreement, to all the 16 relationships, just as you found and they 17 acknowledged. That's what I want. We went up on 18 appeal on Statute of Frauds when we didn't have a 19 written agreement, and all I did was, once that 20 written agreement came into the case, evidence comes 21 in from any source, Plaintiff, Defendant. It came 22 into the case, and there's no appellate court in the 23 land that would not say that that agreement is not in 24 the case. It's in the case for all purposes. It's 25 for the Court to construe. It's for us to take</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. MONAGHAN: -- all evidence. Well, that's 2 for the Judge to rule.</p> <p>3 You cannot -- we can't come this far, we 4 can't come this far, have this agreement dropped on us 5 in 2004, after we demanded it in 2003. This is all 6 part of the record. And then counsel say, okay, too 7 bad, tough break; although we dredge it from the briny 8 deep in 2004, it's not in the case.</p> <p>9 They wanted you to put it in the case. It's 10 in the case. They're stuck with it. There are 11 admissions that I'm going to read in as part of my 12 affirmative case as to what they said in their papers 13 before Your Honor.</p> <p>14 This agreement isn't a one-way street. It 15 doesn't just work for Sunbow. Those clauses that we 16 now agree, all agree, Your Honor and counsel, those 17 clauses give my client rights.</p> <p>18 MS. PHARES: Your Honor --</p> <p>19 THE COURT: Okay. Hold on, hold on.</p> <p>20 MR. MONAGHAN: They give her --</p> <p>21 THE COURT: Do we now agree that we are not 22 arguing over oral contracts of any sort; that that's 23 out of the case?</p> <p>24 MR. MONAGHAN: I don't -- if I may, Your 25 Honor? I don't understand how we -- it's not an</p>	<p>1 advantage of whatever clauses benefit the Plaintiff 2 and the royalty clauses -- that's why she's getting a 3 check; that's why she got a check before the trial.</p> <p>4 MS. PHARES: There was no appeal on the 5 Statute of Frauds position, by the way.</p> <p>6 MR. MONAGHAN: In any event, those issues are 7 gone. We're not here to contravene the Jem agreement, 8 the written Jem agreement. We're not here to say 9 there's a separate oral agreement. We're here to say 10 that applies to that, to the Jem, and orally she will 11 testify that the -- and did, just now, those -- those 12 terms, the reservation of writers royalties, they 13 apply across the board. That's what they said. 14 That's what they said.</p> <p>15 MS. PHARES: Your Honor?</p> <p>16 THE COURT: Yes?</p> <p>17 MS. PHARES: When we started this case -- 18 let's just... When we started this case, we said 19 there was an agreement, and Mr. -- and the Plaintiff 20 denied it. And I did, indeed, beseech you -- I think 21 that was the word I used, and I lost, and I lost -- 22 and Plaintiff -- and Plaintiff prevailed, and we went 23 ahead to prove the oral agreement that she claimed. 24 And then we found the written agreements. But we were 25 already well into trial by the time those written</p>

<p>1 agreements were found, and then the Plaintiff denied 2 the -- the signatures. And then we had to prove the 3 signatures. And then a year later, after we had been 4 in this case for three years, she asked to amend her 5 Complaint, and you denied it, as was appropriate 6 because it was too late. It was not well-founded, and 7 it was certainly prejudicial to Sunbow. And, now, you 8 have, I thought, given great indulgence -- you had 9 then found, you then indeed found, as a result of the 10 framed issue hearing, and having heard all the 11 testimony about the fact that everyone signed the 12 exact same agreement, that she indeed signed her 13 agreement, that the Jem agreement and that form 14 governed all of her relationships. Then she asked, 15 no, I have another oral agreement. And the Court had 16 indulged her. And we have come today, and now we hear 17 that, in fact, no, she has conceded that those oral 18 agreements were indeed merged into the -- into the 19 written agreement. But those written agreements were 20 not sued on, they are not part of the pleadings, and 21 we are not here to construe those agreements, which is 22 what Mr. Monaghan is asking. We were here today only 23 to find out whether there was an oral agreement that 24 could somehow co-exist with the written agreements. 25 It cannot, and therefore --</p>	<p>Page 66</p> <p>1 principal attorneys in chambers. You can decide for 2 yourself who the principal attorneys are. 3 THE WITNESS: Your Honor, can I just ask you 4 a question in general, general, not about the case? 5 THE COURT: Talk to your attorney first; 6 okay? 7 THE WITNESS: It's just that if I bought a 8 house -- 9 THE COURT: Yeah. 10 THE WITNESS: -- wouldn't I talk to my 11 attorney, say I want this and that and that? And then 12 he'd say, Okay, I'll do the contract. I mean, that's 13 what I'm saying. 14 THE COURT: Okay. 15 THE WITNESS: I think everything begins with 16 an oral contract. 17 (Whereupon a recess was taken at approximately 11:55 18 AM.) 19 (Luncheon recess taken at approximately 12:40 PM.) 20 (Court reconvened at approximately 2:35 PM.) 21 THE COURT: All right. We're back on the</p>
<p>1 THE COURT: Well, Counsel, isn't she still 2 entitled to an accounting? 3 MS. PHARES: She is -- she may be. She can 4 bring her case on those -- on the agreements if she 5 thinks so. But the fact of the matter is is that she 6 is paid royalties on the publishing rights that are 7 laid out in them. What Mr. Monaghan and his client 8 want to start now is a new case trying to interpret 9 these agreements to include something more. 10 But the other thing is is that if she has a 11 complaint about her accounting, the agreement says you 12 are to bring a complaint within one year of receiving 13 your royalty statement. 14 Now, we paid royalties, it's true, in -- the 15 last time was 2004, but we received no complaint about 16 that royalty statement. 17 THE COURT: So, she's just been paid another 18 one in 2006. 19 MS. PHARES: So, if she wants to bring a 20 complaint about them, she is entitled to do that, but 21 that's not what this case is. This case started about 22 her claim that she had an oral agreement, and we have 23 now shown that she did not have an oral agreement, and 24 that's the end of this case. 25 THE COURT: All right. I want to talk to the</p>	<p>Page 67</p> <p>1 record. 2 All right, Ladies and Gentlemen, I took as 3 much time as I could during lunch and the -- and I 4 could not answer some of the questions that were in my 5 mind. So, I'm going to take some more time this 6 afternoon and tomorrow morning. At 2:00 o'clock 7 tomorrow afternoon, I'll address everybody's concerns, 8 including I'm go through these Orders. I would like 9 to have BMIs Order looked at by everybody and your 10 analysis of that. We certainly might get rid of that. 11 I will look at the suppression request, though it 12 seems to me that the EBT that you were going to use 13 tomorrow may not be relevant anymore; but I'll talk to 14 you about that tomorrow. 15 In any case, that's for 2:00 o'clock 16 tomorrow. And, at this time, we still have Ms. Bryant 17 on the stand. 18 And, Mrs. Phares, are you finished or do you 19 have -- 20 MS. PHARES: Well, I'll just ask a few more 21 questions. 22 But, Your Honor, I would like to confirm on 23 the record what I think was said before we all 24 adjourned, and in which I think you indicated in 25 chambers, was that the theory of there being an oral</p>

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1 contract still in this case is now over.	1 not.	
2 THE COURT: That's correct.	2 Q. You have no recollection?	
3 CROSS-EXAMINATION BY MS. PHARES: (Cont'd)	3 A. I don't know if -- we did so many things in writing,	
4 Q. Ms. Bryant, is Exhibit M still there by your side.	4 but I don't know if we did that.	
5 A. Yes, that's it. It's funny. The show used to be	5 Q. You have no record of having made an objection in	
6 called M.	6 writing?	
7 Q. Would you please turn to Page 7 of the agreement?	7 A. I have to defer to my attorney. I don't know if we	
8	8 ever made that particular objection.	
9 (The witness complies)	9 Q. Do you understand that if you did not make an	
10	10 objection, that after one year you were barred from	
11 Q. And there's a carry-over paragraph at the top of the	11 making an objection?	
12 page.	12 A. That's what this says.	
13 A. Yeah.	13 Q. Do you have any recollection of whether or not you	
14 Q. And the last sentence of it, if you would look at it,	14 retained an auditor to have the records audited?	
15 says: All royalties, statements, and other accounts	15 A. No, I didn't.	
16 rendered by company shall be binding upon contractor	16 Q. Do you recall whether or not you have ever, in the	
17 and not subject to any objection by contractor, unless	17 past, made a written complaint to Sunbow with respect	
18 specific objection in writing, stating the basis	18 to any of the royalty statements that you've received?	
19 thereof, is given to company by contractor by one year	19 A. No. I made a phone call once about it, and I was told	
20 from the date rendered.	20 that I had no -- I called Sony after I got my BMI	
21 Is that correct?	21 catalog, and I said, You're my publisher. And they	
22 A. Yes.	22 said, well, we control all your compositions. I said,	
23 Q. Now, do you understand that this relates to your	23 Well, I've never gotten any statements from you. And	
24 obligations under the agreement with respect to any	24 then I guess that was at the very beginning when I got	
25 royalty payments that are made to you?	25 my catalog and I saw that Sony was my publisher. I	
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1 A. But none were made. Yeah, I understand that. So, how	1 didn't know Sony was my publisher.	
2 could I object?	2 Q. At the beginning of this agreement, you understand	
3 Q. Do you recall before -- before -- in 2004 that you had	3 that the -- that Kinder and Bryant is the contractor;	
4 received royalty payments from Sunbow?	4 is that correct?	
5 A. Not from Sunbow.	5 A. Yes.	
6 Q. Well, there were royalty payments received from Sunbow	6 Q. And Sunbow is the company; is that correct?	
7 accompanied by Sony ATV royalty statements?	7 A. Yes.	
8 A. Yeah, I think it was Sony.	8 Q. So, did you make any claim to Sunbow?	
9 Q. Okay. So, you remember receiving those?	9 A. No, I didn't know to make a claim. They didn't give	
10 A. Yes.	10 me any statements.	
11 Q. Did you -- do you understand from this language that	11 Q. You don't recall receiving statements --	
12 if you have an objection to those statements, that you	12 A. No.	
13 are required to make an objection in writing within	13 Q. -- from Sony before -- before the trial last year, in	
14 one year?	14 2004?	
15 A. Yes; but we were about to go to court, so I just gave	15 A. Right -- the day -- a day or so before the trial, just	
16 it to my attorney to put in his trust account. I	16 like this one, we got a statement.	
17 didn't at all accept it as a valid accounting.	17 Q. You did receive the statements in 2004?	
18 Q. Did you make -- did you make an objection to those	18 A. I got one statement and a check.	
19 accounting statements to Sunbow?	19 Q. You got -- were there several pages of statements that	
20 A. We didn't understand them, so we asked you what they	20 were submitted?	
21 were. And you said that's what she's owed. That's	21 A. I don't really remember. I remember there were some	
22 all I remember about it.	22 wacky percentages on there that I didn't understand,	
23 Q. I'm just asking you this: Did you make an objection	23 and I didn't understand how it was arrived at, the	
24 to Sunbow in writing?	24 particular figure was arrived at. But something came	
25 A. I really don't know. I don't know whether we did or	25 in with a check, and it came in just about two days	

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1	before the trial, which is the same thing that	1	MS. PHARES: Okay. I'd like to offer in
2	happened for this trial.	2	evidence as Defendant's double AA, as double AA, a set
3	MS. PHARES: Your Honor, if I may have a	3	of documents bearing Sunbow Production Numbers 526 to
4	minute?	4	564, which we don't have a sticker for.
5	THE COURT: Yes.	5	MR. MONAGHAN: Just give us a description.
6		6	MS. PHARES: Which is a set of royalty
7	(Off the record discussion among	7	statements from -- for the period -- well, for several
8	Ms. Phares and co-counsel.)	8	periods; but January to June 1998; from January to
9		9	June 1999; from July to December, 1998; from July to
10	A. And we questioned you.	10	December 1999; from January to June 2000; from July to
11	MR. MONAGHAN: Excuse me, Your Honor. We're	11	December 2000; from January to June 2001; from July to
12	missing those exhibits, and I think perhaps I know --	12	December 2001; from January to June 2002; from July to
13	I suggest that we might have left it in your chambers.	13	December 2002; from January to June 2003, and from
14		14	July to December 2003.
15	(Off the record discussion.)	15	Q. Do you recognize those statements, Ms. Bryant
16		16	(handing)?
17	MS. PHARES: Pat, do you have Plaintiff's	17	A. No.
18	Exhibit 17, 18, and 19?	18	Q. Well, these are the statements that were delivered to
19	MR. MONAGHAN: I did. The court set of	19	you with the check that you remember.
20	exhibits?	20	A. When, just the other day, yesterday?
21	MS. PHARES: Yeah, the court set of exhibits	21	Q. No, in 2004.
22	is what I'm looking for.	22	A. I didn't get anything like this. I got a check. I
23	MR. MONAGHAN: They're here.	23	remember a check. I don't remember anything like
24	MS. PHARES: We're just trying to find	24	this. I never got this.
25	the ... That's 17, 18, and 20.	25	Q. You have no recollection of that?
	Page 75		Page 77
1	(Mr. Korik hands exhibits to Ms. Phares.)	1	A. No. This is explanation for what that check for
2		2	\$4,000.00 was.
3		3	What did you say, it was six years of
4	MS. PHARES: Thank you.	4	royalties?
5	Q. Ms. Bryant, I'm handing you documents that you	5	Q. I just read -- whatever I read is what they were.
6	produced to us which are accounting statements from	6	A. Yeah, six years of royalties.
7	1989 (handing).	7	Q. That's correct.
8	A. Yeah, I remember this.	8	A. Because this would have gotten a letter. I didn't get
9	Q. And 1990 and 1993.	9	something like that. I got a little piece of paper
10	A. Right.	10	and a check. Just like the other day, I got a little
11	Q. 1991.	11	piece of paper and a check. It doesn't explain what
12	A. Right.	12	anything was for.
13	Q. Do you recognize these?	13	Q. And then after the check, you did also receive -- or
14	A. Yes.	14	maybe your lawyer hasn't given it to you -- but you
15	Q. These were sent to you by your lawyer Mr. Dobishinski?	15	received statements accompanying the check last week
16	A. Mr. Dobishinski was not my lawyer. He was Sunbow's	16	as well, did you not?
17	administrator.	17	A. No. Last week I got Bryant, Anne/Kinder, Ford. It
18	Q. In any event, did you ever make a written claim about	18	didn't say what it was for. It didn't say what the
19	any of these royalty statements?	19	songs were. It didn't say the percentages on what
20	A. Well, I took them to be on honest statements. I had	20	basis. You're telling me with the millions of copies
21	no dispute with them. How would I know?	21	of CDs and DVDs you sold that I got \$4,000.00 and I'm
22	Q. I just asked you a simple question. Did you make any	22	supposed to accept this? I didn't get this. I did
23	claim in writing to Sunbow in connection with these	23	get this.
24	statements?	24	Q. Well, I don't know -- what is it that you say that you
25	A. No.	25	did get and you didn't get?

	Page 78		Page 80
1 A.	I got this from Bill Dobishinski.	1	information that would trigger a duty of inquiry,
2 Q.	What's the exhibit number on it?	2	fine; that would be one thing. But the case here and
3 A.	Exhibit ... I can't even -- I don't know what it	3	the case that's set forth in our pleadings is for an
4	says. It looks like -- what does that say?	4	accounting for information we don't have about various
5 Q.	It's Plaintiff's Exhibit 17.	5	uses of the music.
6 A.	Yeah, okay.	6	So, we can proceed down this road all we
7 Q.	And it's Plaintiff's Exhibit 18, and it's Plaintiff's	7	wish, but it's still only going to deal with those
8	Exhibit 19.	8	particular statements that are proven to have been
9 A.	Yeah. That's from my own records. This has to do	9	received by the Plaintiff.
10	with thousands upon thousands of sales of mechanical	10 Q.	And my only question is, is whether or not you had
11	royalties that I never -- I never got this, and you're	11	made a claim that you thought that there was something
12	saying it's a four-year statement.	12	faulty about the royalties?
13 Q.	All I'm asking you --	13 A.	Yes, that's why we're here.
14 A.	Why did you wait for four years to send it to me? How	14 Q.	And you made a claim in writing to Sunbow; is that
15	dare you.	15	what you're stating?
16	THE COURT: Let's not have an argument,	16 A.	They're all kinds of writings to Sunbow having to do
17	please.	17	with my royalties.
18 Q.	There's no question pending.	18 Q.	No, no, I'm not talking about all kinds of royalties.
19 A.	I know.	19	I want you to tell me specifically what writing you
20 Q.	So, you don't recall receiving the statements in 2004?	20	presented to -- and you understand that it said,
21	MR. MONAGHAN: That's not her testimony. Her	21	according to this, you are to state a specific
22	testimony is she didn't get it.	22	objection in writing to Sunbow. Did you ever make --
23 A.	I didn't get it. I got a check and a piece of paper,	23 A.	I'm sorry. I'm not an attorney, but I don't know why
24	something said music royalties, I think, or publishing	24	this lawsuit, suing for my royalties, is not a writing
25	royalties. And the other day I got this piece of	25	to Sunbow. There's been a lot of writing to Sunbow
	Page 79		Page 81
1	paper that said different periods, and it said	1	about my mechanical royalties and my sync fees. Those
2	publishing music royalties it said. And then the next	2	are writings to Sunbow. Consider yourself notified
3	day something came along that said, In Account with	3	for six years now.
4	Anne Bryant; not like this. That just said Anne	4 Q.	Ms. Bryant, have you ever asked -- have you ever
5	Bryant this much money, and so and so that much money,	5	arranged for an accounting using an auditor to audit
6	and it was -- it was not this.	6	the records of your publishing --
7 Q.	All right. And just let me ask you, just for your	7 A.	I'm suing for an accounting.
8	information, we've provided the royalty statements to	8	MS. PHARES: Your Honor, I don't think
9	your lawyer on Friday morning. Just, you perhaps --	9	there's any -- this is all the record that I can make
10	have you seen those statements?	10	today based on the fact that --
11 A.	I saw that -- I saw that. It came in the other day.	11	THE COURT: All right.
12 Q.	You've seen those statements?	12	MS. PHARES: -- we were not on notice that we
13 A.	Yeah.	13	were proceeding on anything relating to accountings
14 Q.	Thank you. That's all I wanted to know.	14	under this. There's certainly no notice in the
15	But, in any event, have you ever made a claim	15	Complaint, and there was certainly no notice as of
16	on a royalty statement that you have received from	16	last Friday.
17	Sony -- from Sunbow? I beg your pardon.	17	THE COURT: All right.
18 A.	No, I haven't from Sunbow.	18	Mr. Monaghan?
19	MR. MONAGHAN: Let me put an objection on the	19	MR. MONAGHAN: Thank you, Judge. Redirect.
20	record, just to make my record. The notion that the	20	We're still missing Volume 1 of the appendix,
21	royalty statement would be binding as to information	21	Your Honor, and we're missing the other binder, but
22	that isn't covered in the royalty statement is	22	I'll proceed with what I have.
23	completely incorrect. If there is a royalty statement	23	THE COURT: Well --
24	that sets forth information from which a reasonable	24	MR. MONAGHAN: It's what I showed you in
25	person or the artist in question could glean	25	chambers, but I don't know what happened to it

<p>1 thereafter.</p> <p>2 MR. KORIK: Your Honor, it was --</p> <p>3 MR. MONAGHAN: It's the other volume of the</p> <p>4 appendix, and I showed you the Complaint.</p> <p>5 THE COURT: Well, I'll tell you what, I will</p> <p>6 go look because I could have put it somewhere. I</p> <p>7 doubt it, but we'll take a short recess, ten minute</p> <p>8 recess.</p> <p>9 MR. MONAGHAN: Thank you, Your Honor.</p> <p>10 (Recess taken at approximately 2:55 PM.)</p> <p>11 (Court reconvened at approximately 3:10 PM.)</p> <p>12</p> <p>13 THE COURT: Okay. Let's see. Ms. Saffer,</p> <p>14 are you --</p> <p>15 MS. SAFFER: I'm so sorry.</p> <p>16 THE COURT: Do you have any questions to ask</p> <p>17 anybody?</p> <p>18 MS. SAFFER: No, I will, maybe after Pat does</p> <p>19 his Redirect have some questions but not at this</p> <p>20 juncture. Thank you.</p> <p>21 THE COURT: Okay; all right.</p> <p>22 MS. SAFFER: I apologize, Your Honor.</p> <p>23 THE COURT: That's all right.</p>	<p>Page 82</p> <p>1 contains the entire understanding of the parties</p> <p>2 hereto relating to the subject matter herein</p> <p>3 contained, and this agreement cannot be changed,</p> <p>4 rescinded, or terminated orally.</p> <p>5 Do you remember that?</p> <p>6 A. Yes, I remember that.</p> <p>7 Q. Okay. And that's the clause that we've been calling</p> <p>8 the merger clause, the integration clause.</p> <p>9 A. Uh-huh.</p> <p>10 Q. What was the subject matter to which that clause in</p> <p>11 this agreement referred?</p> <p>12 MS. PHARES: Objection. Calls for a legal</p> <p>13 conclusion.</p> <p>14 MR. MONAGHAN: No, it doesn't. Her</p> <p>15 understanding.</p> <p>16 THE COURT: I'll allow it. Go ahead.</p> <p>17 A. Well, this agreement was not changed or terminated</p> <p>18 orally, so, I don't know ...</p> <p>19 Q. To what does this particular Jem agreement apply?</p> <p>20 MS. PHARES: Objection, Your Honor. I</p> <p>21 thought the oral agreement theory was now behind us.</p> <p>22 A. To all --</p> <p>23 THE COURT: Just a moment, just a moment.</p> <p>24 You have to let an attorney state an objection.</p> <p>25 Go ahead.</p>
<p>1 MR. MONAGHAN: May I proceed, Judge?</p> <p>2 THE COURT: Yes, please.</p> <p>3 MR. MONAGHAN: Do you have Exhibit M, the Jem</p> <p>4 agreement?</p> <p>5 THE WITNESS: I have it here.</p> <p>6 MR. MONAGHAN: Oh, you have it. Okay.</p> <p>7 REDIRECT EXAMINATION BY MR. MONAGHAN:</p> <p>8 Q. Mrs. Bryant, Ms. Phares had asked you questions about</p> <p>9 the Jem agreement, and we've all agreed that Exhibit</p> <p>10 M, the Jem agreement, applies to all the relationships</p> <p>11 in the case?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And the Court has found there's valid written</p> <p>14 agreements, and you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you understand that, for a period of time,</p> <p>17 you were telling the Court there was no written</p> <p>18 agreement; do you recall that?</p> <p>19 A. I don't remember whether there was one, but I didn't</p> <p>20 have one. I didn't have a copy. I didn't know if we</p> <p>21 signed it.</p> <p>22 Q. Now, Ms. Phares also directed your attention to the</p> <p>23 last page, Page 10, and she asked you, I believe, to</p> <p>24 read that into the record, which is, and I'll repeat</p> <p>25 it, that's Subparagraph 13C, quote: This agreement</p>	<p>Page 83</p> <p>1 MS. PHARES: My understanding is that the</p> <p>2 merger clause which was relevant to Plaintiff's -- to</p> <p>3 Plaintiff's oral agreement theory is now behind us</p> <p>4 since we have conceded that all of the oral agreements</p> <p>5 about which she engaged were merged into the later</p> <p>6 written agreements.</p> <p>7 THE COURT: Well, I'll tell you, Counselor, I</p> <p>8 don't quite know where Mr. Monaghan is going, and,</p> <p>9 therefore, I tend to let attorneys ask a couple of</p> <p>10 questions. I'm going to allow him to go ahead.</p> <p>11 Q. What songs were the subject matter of this particular</p> <p>12 Jem agreement?</p> <p>13 A. Oh, the Jem songs, the Jem feature songs.</p> <p>14 Q. Okay. And is that -- was that specifically the Jem --</p> <p>15 MS. PHARES: Objection, Your Honor.</p> <p>16 THE COURT: Yes.</p> <p>17 MS. PHARES: We're once again construing an</p> <p>18 agreement which it describes on Page 1 what it covers,</p> <p>19 and this is a legal conclusion from this -- from</p> <p>20 this --</p> <p>21 THE COURT: Well --</p> <p>22 MS. PHARES: -- witness.</p> <p>23 THE COURT: Well, it's in evidence, and I'll</p> <p>24 allow the question. Let's go ahead.</p> <p>25 MR. MONAGHAN: She's answered the question.</p>
<p>1 MR. MONAGHAN: May I proceed, Judge?</p> <p>2 THE COURT: Yes, please.</p> <p>3 MR. MONAGHAN: Do you have Exhibit M, the Jem</p> <p>4 agreement?</p> <p>5 THE WITNESS: I have it here.</p> <p>6 MR. MONAGHAN: Oh, you have it. Okay.</p> <p>7 REDIRECT EXAMINATION BY MR. MONAGHAN:</p> <p>8 Q. Mrs. Bryant, Ms. Phares had asked you questions about</p> <p>9 the Jem agreement, and we've all agreed that Exhibit</p> <p>10 M, the Jem agreement, applies to all the relationships</p> <p>11 in the case?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And the Court has found there's valid written</p> <p>14 agreements, and you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you understand that, for a period of time,</p> <p>17 you were telling the Court there was no written</p> <p>18 agreement; do you recall that?</p> <p>19 A. I don't remember whether there was one, but I didn't</p> <p>20 have one. I didn't have a copy. I didn't know if we</p> <p>21 signed it.</p> <p>22 Q. Now, Ms. Phares also directed your attention to the</p> <p>23 last page, Page 10, and she asked you, I believe, to</p> <p>24 read that into the record, which is, and I'll repeat</p> <p>25 it, that's Subparagraph 13C, quote: This agreement</p>	<p>Page 83</p> <p>1 MS. PHARES: My understanding is that the</p> <p>2 merger clause which was relevant to Plaintiff's -- to</p> <p>3 Plaintiff's oral agreement theory is now behind us</p> <p>4 since we have conceded that all of the oral agreements</p> <p>5 about which she engaged were merged into the later</p> <p>6 written agreements.</p> <p>7 THE COURT: Well, I'll tell you, Counselor, I</p> <p>8 don't quite know where Mr. Monaghan is going, and,</p> <p>9 therefore, I tend to let attorneys ask a couple of</p> <p>10 questions. I'm going to allow him to go ahead.</p> <p>11 Q. What songs were the subject matter of this particular</p> <p>12 Jem agreement?</p> <p>13 A. Oh, the Jem songs, the Jem feature songs.</p> <p>14 Q. Okay. And is that -- was that specifically the Jem --</p> <p>15 MS. PHARES: Objection, Your Honor.</p> <p>16 THE COURT: Yes.</p> <p>17 MS. PHARES: We're once again construing an</p> <p>18 agreement which it describes on Page 1 what it covers,</p> <p>19 and this is a legal conclusion from this -- from</p> <p>20 this --</p> <p>21 THE COURT: Well --</p> <p>22 MS. PHARES: -- witness.</p> <p>23 THE COURT: Well, it's in evidence, and I'll</p> <p>24 allow the question. Let's go ahead.</p> <p>25 MR. MONAGHAN: She's answered the question.</p>

	Page 86		Page 88
1	Q. Your answer is this -- this agreement --	1	units that have been sold?
2	MS. PHARES: Excuse me. Objection. She said	2	It says "your share". And I don't know what my share
3	that she answered it. We don't need to have you	3	is. My share of what?
4	repeat it.	4	Q. Do these royalty statements tell you the amount of
5	MR. MONAGHAN: Okay. Thank you, Ms. Phares.	5	sheet music which has been sold?
6	I appreciate the correction.	6	A. No, it just says --
7	Q. All right. Now, Ms. Phares also showed you what she	7	Q. Do these royalty statements tell you the number of
8	characterized as an accounting. That was dubbed	8	piano copies sold?
9	Exhibit double A. Do you recall this?	9	A. No, no.
10	A. Yes.	10	Q. Do these royalty statements tell you anything about
11	Q. This is not in evidence. But do you recall her	11	orchestrations for which 10% is required under the
12	showing you this account?	12	agreement?
13	A. Yes.	13	A. No.
14	Q. And you recall your testimony that you didn't receive	14	Q. Do these royalty statements tell you anything about
15	this?	15	song books, folios, or similar publications?
16	A. I don't remember receiving that. I remember a check.	16	A. No.
17	Q. Okay. But take a look at what Ms. Phares has referred	17	Q. Do they tell you about any other uses of the music for
18	to as an accounting.	18	which you're supposed to get 50% according to that
19	MS. PHARES: Objection, Your Honor. These	19	agreement?
20	were referred to as royalty statements, and I'm -- you	20	A. Well, in a quick look I don't see anything coming
21	know, I can't look back at the record. We don't have	21	anywhere near 50%. I just see a period received, and
22	it today. They are royalty statements.	22	then it says a hundred, and then it says, Amount
23	MR. MONAGHAN: Okay. Royalty statements.	23	received and Your share.
24	I'll take that.	24	MR. MONAGHAN: Okay.
25	MS. PHARES: Mr. Monaghan knows that these	25	A. And I don't know where -- my share seems to be
	Page 87		Page 89
1	are royalty statements.	1	repeatedly 229 -- point 973, not 50%.
2	THE COURT: All right. They're royalty	2	Q. Okay. And against what information could you possibly
3	statements. Go ahead.	3	have used what you have in your hands now to determine
4	MR. MONAGHAN: Well, is counsel stipulating,	4	whether or not you were getting an accurate
5	then, that these are not the accountings that are	5	accounting?
6	referred to in Paragraph 6 of the Jem agreement?	6	A. Nothing. I wouldn't be able to tell that.
7	MS. PHARES: No.	7	Q. Now, counsel also made reference to the check that you
8	MR. MONAGHAN: Okay. I didn't think so.	8	got last week. And I'm going to ask the Reporter to
9	That's why I'm asking.	9	mark this Plaintiff's 49 for identification, Your
10	A. I don't remember getting this or these monies.	10	Honor.
11	Q. Okay. Is there anything in that document that relates	11	A. Do I get to take this home?
12	to this Jem agreement?	12	MR. MONAGHAN: We'll get you a copy.
13	A. Right off I see some Jem songs.	13	THE WITNESS: I didn't get these checks.
14	Q. Is there anything that tells you that you're getting	14	MR. MONAGHAN: I asked the Reporter to mark
15	these royalty statements accompanied by remuneration	15	the exhibit.
16	rendered twice during each calendar year during which	16	THE COURT: Okay.
17	royalties are payable? In other words, how do you	17	MR. MONAGHAN: I have a copy for Your Honor.
18	connect that document to that provision in the	18	THE COURT: Yeah, sure.
19	agreement?	19	MR. MONAGHAN: This is what I got, and I
20	A. Well, I don't know if I can find it fast enough.	20	received it -- I received it eventually by Mr. Knapp's
21	Q. I'm not asking you to do that. I'm asking you to --	21	letter dated December 1, 2006, in the form that we've
22	A. No, but she read off -- she read off semi-annual	22	given you.
23	dates. That's the only thing I know. I haven't had a	23	
24	chance to look at this particular accounting yet.	24	(PLAINTIFF'S EXHIBIT NO. 48 - LETTER
25	Q. Do these royalty statements tell you the number of	25	AND ACCOUNTING STATEMENTS - MARKED

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1	FOR IDENTIFICATION.)	1	relating to that check.
2		2	MS. PHARES: Well, you didn't manage to
3	MS. PHARES: These were the ones that -- Your	3	achieve that, I'm afraid.
4	Honor, I just want to make -- this is the one that was	4	MR. MONAGHAN: Well, I didn't also receive 27
5	sent on Friday; right?	5	pages of royalty statements. So, if -- I'll mark it
6	MR. MONAGHAN: Yeah.	6	as a separate exhibit. I don't care -- or counsel can
7	MS. PHARES: Right, yes, of course I agree	7	do it on her own, Recross.
8	that they were sent to you.	8	THE COURT: Look, I have, I think, a copy,
9	MR. MONAGHAN: All right. Then we're going	9	and there are 30 pages.
10	to offer Exhibit 49 in evidence.	10	MS. PHARES: Yes, that's --
11	THE WITNESS: It's three percent for the	11	THE COURT: 30 pages.
12	transformers.	12	MS. PHARES: That's the copy that we sent to
13	MR. MONAGHAN: Wait, Anne.	13	Mr. Monaghan, and you were copied on it, Your Honor.
14	MS. PHARES: But, Your Honor, just for the	14	THE COURT: Right. And it's --
15	record, we also produced another set of these	15	MS. PHARES: And Mr. Monaghan's copy does not
16	yesterday to Mr. Monaghan with base numbers so that we	16	have that many pages.
17	can refer to them, and we did it for that purpose.	17	THE COURT: Okay. And, Mr. Monaghan, because
18	So, you might want to use that copy.	18	we're getting near the holiday season, I'm going to
19	THE COURT: All right. This is 48 or 49?	19	give you this one, and then I'll get that one. Do you
20	MR. MONAGHAN: This is 49. So, will that be	20	have it now?
21	in evidence, Your Honor?	21	MR. MONAGHAN: I think I have.
22	THE COURT: Objection?	22	THE COURT: 30 pages in it?
23	MS. PHARES: Just one moment, Your Honor. I	23	MR. MONAGHAN: Is there, other than the cover
24	just want to make sure that this is indeed all of what	24	letter -- I have 11 -- can I just look at it for a
25	we produced. And it's not, it's not.	25	second, Judge?
	Page 91		Page 93
1	We produced -- yeah, we produced 27 -- I	1	THE COURT: Yeah, yeah (handing).
2	think pages of royalty statements. We can hand you a	2	MR. MONAGHAN: Well, this doesn't have the
3	copy with the base numbers on them.	3	Sunbow Production numbers on it, but ...
4	MR. MONAGHAN: And I endeavored to put	4	MS. PHARES: That's right.
5	together everything that you sent to us.	5	MR. MONAGHAN: For the purposes of my
6	Well, how about we make this -- I don't have	6	question --
7	the time to compare, neither do you, Your Honor, but	7	MS. PHARES: We're going to do this -- I'm
8	we'll make this 48A and deem it part of the exhibit.	8	not going to stipulate to the exhibit going in if it's
9	THE COURT: Well, okay. I really want to	9	not the right exhibit.
10	have the exhibit --	10	MR. MONAGHAN: Okay.
11	MR. MONAGHAN: Mark it part of 48, then.	11	THE COURT: Hold on. Then I have ten pages
12	THE COURT: All right. It's all 48.	12	that are from your office.
13	MS. PHARES: Your Honor, no. We have an	13	MR. MONAGHAN: Yes, Your Honor.
14	objection here. First of all, this is a letter from	14	THE COURT: Okay. Is that part of that
15	my associate John Knapp, and he's enclosing the	15	exhibit, too?
16	documents. This was on Friday morning. And there	16	MR. MONAGHAN: Yes.
17	were 27 pages of them. Then attached to it are copies	17	MS. PHARES: But not ten pages.
18	of --	18	THE COURT: Not ten pages.
19	MR. MONAGHAN: We don't accept that.	19	MS. PHARES: I mean, he has bits of both
20	MS. PHARES: -- a letter from Mr. De Sousa of	20	communications.
21	TV Loonland to Mr. Monaghan transmitting the check.	21	THE COURT: Well, let's do this: Let's take
22	That was not sent by Mr. Monaghan -- by Mr. Knapp.	22	the 30 pages, all right, and that's 48. All right?
23	So, this is a little confusing, this exhibit is.	23	MR. MONAGHAN: Then I'm going to offer 49,
24	MR. MONAGHAN: I'm trying to have in one	24	which was the cover letter, which is not part of the
25	place, one exhibit, all the stuff we got lately	25	30 pages.

<p style="text-align: right;">Page 94</p> <p>1 THE COURT: Is that this letter from you?</p> <p>2 MR. MONAGHAN: Yes.</p> <p>3 THE COURT: Why do we need that?</p> <p>4 MR. MONAGHAN: Well, this doesn't have a</p> <p>5 check as far as I can tell.</p> <p>6 THE COURT: Well, the one with the check is</p> <p>7 really the one from Mr. De Sousa.</p> <p>8 MS. PHARES: Right.</p> <p>9 MR. MONAGHAN: Right.</p> <p>10 THE COURT: So -- and that is, I think, three</p> <p>11 or four pages, plus a copy of the envelope.</p> <p>12 MR. MONAGHAN: I'm happy to substitute 30</p> <p>13 pages that Ms. Bryant gave the Court -- Ms. Bryant --</p> <p>14 Ms. Phares gave the Court underneath the cover letter</p> <p>15 from Mr. Knapp, in lieu of the seven or eight pages I</p> <p>16 received the first go 'round. I'm happy to substitute</p> <p>17 what they say, and I'll take the letters off the top,</p> <p>18 put that in there --</p> <p>19 MS. PHARES: And make that one exhibit, but</p> <p>20 don't put Mr. De Sousa's letter in it because it</p> <p>21 appears as though Mr. Knapp sent that to you and he</p> <p>22 did not.</p> <p>23 MR. MONAGHAN: I agree. How about with that</p> <p>24 stipulation? I agree.</p> <p>25 MS. PHARES: So, we have two documents.</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. PHARES: Your Honor, just so -- there's</p> <p>2 some confusion. Did you just say that the 47 was</p> <p>3 withdrawn?</p> <p>4 THE COURT: Yes.</p> <p>5 MS. PHARES: Okay.</p> <p>6 BY MR. MONAGHAN:</p> <p>7 Q. All right, Ms. Bryant. I'm showing you now</p> <p>8 Plaintiff's 48 in evidence. Are you familiar with</p> <p>9 this exhibit now?</p> <p>10 A. I'm familiar with this part of it, with the letter</p> <p>11 that came from Mr. De Sousa, the check.</p> <p>12 MS. PHARES: Your Honor, if Mr. Monaghan</p> <p>13 stands back here, then Ms. Bryant will probably speak</p> <p>14 loud enough so that we can all hear her.</p> <p>15 THE WITNESS: That's true.</p> <p>16 MR. MONAGHAN: I'll stand here.</p> <p>17 THE COURT: Okay. Go ahead.</p> <p>18 Q. Tell the Court and counsel which of these pages in</p> <p>19 this exhibit in evidence you are familiar with and</p> <p>20 you've seen?</p> <p>21 A. First and foremost I got a check from Mr. De Sousa,</p> <p>22 and I got a short statement with it with the check,</p> <p>23 and that's all that came that day. It came by</p> <p>24 international FedEx.</p> <p>25</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. MONAGHAN: Mr. Knapp did not send me Mr.</p> <p>2 De Sousa's letter. Mr. De Sousa sent the letter</p> <p>3 directly to our office with the check on behalf of</p> <p>4 Sunbow; came to our office directly, as addressed.</p> <p>5 So, with that stipulation --</p> <p>6 MS. PHARES: And would you tell me the base</p> <p>7 stamps you've got? Just the first and the last.</p> <p>8 MR. MONAGHAN: Up here I only have 1142.</p> <p>9 MS. PHARES: To ...?</p> <p>10 MR. MONAGHAN: To 1169.</p> <p>11 MS. PHARES: Okay.</p> <p>12 MR. MONAGHAN: Shall we put that in there?</p> <p>13 MS. PHARES: Inclusive, yes.</p> <p>14 MR. MONAGHAN: Inclusive, all inclusive. You</p> <p>15 want the whole record?</p> <p>16 THE COURT: Okay. That's what 37 pages?</p> <p>17 Don't count them.</p> <p>18 MR. MONAGHAN: Okay. I'm not good at it.</p> <p>19 Okay. And that's in evidence, 48.</p> <p>20</p> <p>21 (Off the record discussion.)</p> <p>22</p> <p>23 (PLAINTIFF'S EXHIBIT NO. 48 - LETTER</p> <p>24 AND ACCOUNTING STATEMENTS - RECEIVED</p> <p>25 IN EVIDENCE.)</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. Now, what does that short statement tell you,</p> <p>2 what information is provided in the short statement?</p> <p>3 A. It just gave me several quarters, June 30, 2004, and</p> <p>4 then U.S. dollars, 327; December 31, 2004, \$266.00;</p> <p>5 June 30, 2005, \$205.00; and then a bump up December</p> <p>6 31, 2005, \$5897 and change. And then one more</p> <p>7 quarter. So, it's looks like one, two, three, four,</p> <p>8 five quarters totaling \$7,417.00. That's what that</p> <p>9 was, by global FedEx. And here's a copy of the FedEx.</p> <p>10 Q. And the single page, that total there, the 7417.43</p> <p>11 agrees with the amount on the check?</p> <p>12 A. Yes.</p> <p>13 Q. Yeah. And what does the check say?</p> <p>14 A. The check?</p> <p>15 Q. Does the check have any notation on it --</p> <p>16 A. Yeah.</p> <p>17 Q. -- as to why it's being given to you?</p> <p>18 A. The check says music royalties.</p> <p>19 Q. Okay. Now, just at this point, just limiting to that</p> <p>20 short statement and the check, is there any way that</p> <p>21 you can relate that check and that payment to any of</p> <p>22 these payments that are to be made to you under the</p> <p>23 Jem agreement?</p> <p>24 A. I can only assume that they're accurate.</p> <p>25 Q. Don't assume.</p>

	Page 98		Page 100
1 A.	I don't know, I don't know. They seem to be music publishing royalty -- music publishing income. That's all it says. But I don't know if they're accurate.	1 A.	Yes.
2 Q.	Does it say anything about phonograph records sold, piano copies --	2 Q.	Okay. You have "the company". Who's the company? What's the company in the agreement?
3		3	Sunbow.
4 A.	No, it's not specific.	4 Q.	And you have the contractor?
5 Q.	-- sheet music, the amount of units that have been sold, where licenses have been granted to third parties?	5 A.	Kinder and Bryant.
6 A.	No, it's not specific.	6 Q.	And who is the Writer?
7 Q.	Is any of that information at all provided there?	7 A.	Anne Bryant. Ford Kinder, too.
8 A.	No.	8 Q.	And do you know why the writer is initial capped? In other words, is the Writer a defined term in the agreement?
9 Q.	Now, would you please look at the statements, the so-called royalty statements.	9 A.	Well, they determined the Writer up top as I remember.
10 A.	By the way, who is the issuer of this royalty statement?	10 Q.	Okay. In the preamble of the agreement --
11 Q.	Sony ATV Music Publishing, LLC.	11 A.	Yes.
12 A.	Do you have any agreement with Sony ATV Music Publishing, LLC.	12 Q.	-- paragraph?
13 Q.	I never made an agreement with them.	13 A.	MS. PHARES: Your Honor, the agreement speaks for itself.
14 Q.	Okay. Do you know why Sony ATV, LLC, is sending you this statement?	14 Q.	MR. MONAGHAN: It does.
15 A.	I know from the production -- document production in this case and from my finally getting my --	15 Q.	MS. PHARES: It's ...
16 Q.	No.	16 Q.	So, ...
17 A.		17 A.	They call this collectively the Writer, us as individual writers.
18 Q.		18 Q.	MR. MONAGHAN: Okay.
19 A.		19 Q.	MS. PHARES: It refers to you jointly as the Writer.
	Page 99		Page 101
1 A.	I just know that they seem to have taken over the catalog in some way for Star Wild and Wild Star, Sunbow's companies.	1	THE COURT: Please, go ahead.
2 Q.	Did you ever see any document, were you ever told by Sunbow, did you ever receive a letter or anything that told you we are now assigning the publishing from Sunbow or Wild Star or Star Wild over to Sony ATV?	2	MR. MONAGHAN: Your Honor, I'm going to
3		3	address now the question of whether or not there has
4		4	been an accounting issue in the case, and I'm going to
5		5	point to your decision dated May 28, 2004, right
6		6	before the last trial, and an Order of May 26, 2004.
7		7	And in that you said, quote: Following extensive
8		8	prior motion practice, Plaintiff's first Amended
9		9	Complaint specifically pleads two causes of action
10		10	against Defendant Bacal for unjust enrichment and
11		11	constructive trust and a single cause of action
12		12	against Defendant Sunbow, for which -- for unjust
13		13	enrichment, for which Plaintiff seeks compensatory
14		14	damages and an accounting -- and an accounting.
15		15	And I will point out that the Amended
16		16	Complaint set forth claim for an accounting.
17		17	MS. PHARES: Page?
18		18	MR. MONAGHAN: And also said --
19		19	MS. PHARES: Your Honor?
20		20	MR. MONAGHAN: Okay.
21		21	MS. PHARES: -- if Mr. Monaghan's quoting from
22		22	the one of his many Complaints, I'd like to know which
23		23	one and what paragraph.
24		24	MR. MONAGHAN: Okay. Page 6, which deals
25		25	with the first amended cause of action allowed by the

<p>1 Court against Defendant Sunbow for unjust enrichment, 2 and, among other things, Paragraph 5 demands that the 3 Court direct Sunbow to render a true and complete 4 accounting as to any and all monies received -- or to 5 be received by Defendant Sunbow from the production 6 and exploitation of the foregoing compositions and 7 that judgment be had in Plaintiff's favor for all such 8 monies, together with interest and attorney's fees 9 caused in the suit.</p> <p>10 MS. PHARES: But this isn't an accounting on 11 monies received by Defendant Sunbow.</p> <p>12 MR. MONAGHAN: Oh, it is. It is. That's the 13 damages phase. And requests --</p> <p>14 THE COURT: I thought -- hold on. I thought 15 that in one of the admissions that was read by Ms. 16 Phares, that the Plaintiff agreed that there was no 17 money that had gone to Sunbow that should have gone to 18 her.</p> <p>19 MR. MONAGHAN: For performance royalties. 20 Performance royalties. We are not talking about 21 performance royalties. This agreement licenses back 22 to Ms. Bryant.</p> <p>23 When the copyright was transferred -- and I 24 don't think I'll get a fight on this one. When the 25 copyright was transferred, all rights go over to</p>	<p>Page 102</p> <p>1 says that they are requesting an accounting as to any 2 and all monies received or to be received by Defendant 3 Sunbow.</p> <p>4 Now, this statement is -- these are 5 statements produced by a music administrator for the 6 copyright owners. It is sent to -- to Sunbow and 7 produced to Ms. Bryant. These are not monies received 8 by Sunbow. And, furthermore, and it was -- and -- 9 yes -- and this is an accounting under a claim for 10 unjust enrichment, and there is no question that 11 Sunbow has not received any monies. And, furthermore, 12 -- well, that's a fact. We have not received any of 13 these monies. If there is a claim, and, frankly, this 14 is part of what I was going to say to you tomorrow, 15 but if there's likely to be an accounting, there are 16 likely to be other necessary parties, including a 17 music administrator, and there are going to have to be 18 -- and the -- and the parties for whom the 19 administrator is acting, who will have to be part of 20 this. And for -- and on top of it, as a factual 21 matter, whereas neither Mr. Monaghan or Ms. Bryant is 22 very expert on -- on royalty statements, and I can 23 certainly say that neither am I, but I can certainly 24 see that right across the top is our headings and 25 they're separate because these come from different</p>
<p>1 Sunbow, all rights. But the coming back to the 2 Plaintiff or the rights set forth in the agreement, 3 which includes the writer's share of performance 4 royalties. There's a separate clause in there.</p> <p>5 MS. PHARES: Your Honor?</p> <p>6 THE COURT: Hold on.</p> <p>7 MR. MONAGHAN: In addition to that -- in 8 addition to that, Paragraph 6 is the paragraph dealing 9 with the writer's rights, the writer's reservation of 10 publishing interest. And that's what this accounting 11 is purporting to try and deal with, this so-called 12 accounting.</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. MONAGHAN: But without -- without telling 15 the recipient what it is you're accounting for, how 16 many units, and going down the list, this is 17 meaningless information for the Plaintiff. So, to 18 suggest she should have tried to complain about it 19 previously, other than this lawsuit, which has been in 20 place for years and years, is disingenuous.</p> <p>21 MS. PHARES: Well, Your Honor, I mean, first 22 of all, there are several statements here. First of 23 all, the Paragraph of the Complaint that Mr. Monaghan 24 is referring to is 5 of the demand or, rather, 5 under 25 his first amended cause of action. It specifically</p>	<p>Page 103</p> <p>1 Page 105</p> <p>1 countries because the publisher is collecting also 2 from foreign collecting agencies, it says record 3 number and then it has a unit number. And it has the 4 number of units that are involved. It has the period 5 involved. It has the percent received. And then it 6 has the specific amount and the shares and the amount 7 due to this person.</p> <p>8 Now, I suspect that there hasn't been 9 sufficient time to study this in the last 48 hours, 10 since everyone was getting ready for trial, but this 11 is exactly like the statements that were produced in 12 2004, and we have not heard any complaint specifically 13 about them. But, furthermore, if there had been a 14 complaint, then the action is to go to Sunbow and say 15 we have a problem with this. And you put it in 16 writing, and then you proceed to follow up on the 17 collection of facts that would lead to a question of 18 whether or not there's a dispute on the royalty 19 statements. That's what the accounting would be.</p> <p>20 This is -- this is just an effort to try and 21 suggest that -- that something has not happened when 22 we have no information about that. We don't even have 23 the right parties to determine that. We are not -- 24 the parties in this room cannot decide whether or not 25 these royalty statements are accurate. And this --</p>

<p style="text-align: right;">Page 106</p> <p>1 this is a proceeding that has to take place pursuant 2 to a condition proceeding, which is a demand, if Ms. 3 Bryant believes that there's something the matter, and 4 she writes down and she says, I think that I'm 5 entitled to X, Y, and Z, and I don't see it here, or I 6 don't believe that it is here. And then someone has 7 an opportunity to show that. That hasn't happened.</p> <p>8 THE COURT: All right. That's certainly your 9 position.</p> <p>10 All right. Do you have any other questions 11 of this witness?</p> <p>12 MR. MONAGHAN: Yes, I do, Your Honor.</p> <p>13 THE COURT: All right.</p> <p>14 MR. MONAGHAN: I'm assuming I'm proceeding on 15 a Redirect which is following the Direct that occurred 16 when we were up in New City or --</p> <p>17 THE COURT: Plus I'm allowing you to go into 18 other things that were brought up on Cross, that --</p> <p>19 MR. MONAGHAN: Were not covered.</p> <p>20 THE COURT: The oral agreements and things 21 like that; even though I believe that's out of the 22 case now.</p> <p>23 Go ahead.</p> <p>24 MR. MONAGHAN: The oral agreements.</p> <p>25 BY MR. MONAGHAN:</p>	<p>1 deal with the publishing on your behalf?</p> <p>2 A. No.</p> <p>3 Q. Okay. You understood that they were doing it for the 4 mutual benefit of yourself and the publisher?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Okay. And that was completely consistent with the 7 agreement?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. But whose responsibility was it to file 10 accurate information with BMI as to the contributions, 11 musical contributions to these compositions?</p> <p>12 A. The publisher or the publisher's administrator, which 13 would be Sunbow or Sunbow's publishing companies and 14 their administrator, Bill Dobishinski.</p> <p>15 Q. Right. And were those -- do you know what types of 16 forms? Do they have a name that were used?</p> <p>17 A. Yes. Clearance forms.</p> <p>18 Q. When are clearance forms used?</p> <p>19 A. They're the forms where you list the name, address, 20 Social Security number, and affiliation, BMI or ASCAP, 21 of the writers and their percentage of the songs, and 22 they're filed by the producer, the publisher. In the 23 beginning they were filed by Sunbow, Alyss Gouyet 24 (sic) at Sunbow, and then, when they hired Bill 25 Dobishinski, he put in -- in the clearance forms.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Ms. Bryant, now this -- for the first part of my 2 questioning I'm going to be dealing with BMI. And you 3 were questioned by Ms. Saffer about how jingles are 4 registered, songs are registered.</p> <p>5 A. Yeah.</p> <p>6 Q. And do you remember what you told Court, and, if you 7 can, refresh our recollection, your understanding as 8 to how your compositions were registered with BMI.</p> <p>9 A. In the main, my compositions are registered by a 10 publisher or the administrator for the publisher.</p> <p>11 Q. Okay. And who is that?</p> <p>12 A. The publisher was Sunbow, d/b/a Star Wild or Wild 13 Star, one of d/b/a companies, publishing companies, 14 and they had an administrator that they hired, Bill 15 Dobishinski.</p> <p>16 Q. Okay. They hired Bill Dobishinski?</p> <p>17 A. Yes.</p> <p>18 Q. He wasn't hired by you?</p> <p>19 A. No.</p> <p>20 Q. Okay. Now, that -- that Star Wild and Wild Star is, 21 in fact, the music publishing company that's referred 22 to in the Sunbow agreement, isn't it?</p> <p>23 A. Right.</p> <p>24 Q. Okay. And, so, you aren't complaining about the fact 25 that Sunbow was allowing Wild Star or Star Wild to</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. So, for example, Exhibit 3 in evidence, is that such a 2 clearance form (handing).</p> <p>3 A. Yes, this is the original filing for the transformers.</p> <p>4 Q. And what's your percentage interest shown on that 5 clearance form?</p> <p>6 A. 50%.</p> <p>7 Q. Okay. And what's the composition?</p> <p>8 A. The transformers main theme. This is actually the TV 9 show filing, yeah.</p> <p>10 Q. Okay. And what percentage are you currently getting 11 from any use of the transformers, performance use?</p> <p>12 A. In the main, I'm getting 8.3%. I've seen a few 50% 13 credits, and I don't know who decides which -- which 14 way to pay me.</p> <p>15 Q. Okay. But this form, that wasn't seen by you before 16 it was filed, was it?</p> <p>17 A. No.</p> <p>18 MR. MONAGHAN: Okay.</p> <p>19 A. Sunbow submitted it with their names on it.</p> <p>20 Q. Okay. And, likewise, Plaintiff's Exhibit 4 in 21 evidence, is that another clearance form that was used 22 (handing)?</p> <p>23 A. Oh, I remember this one. Yes, this is the 24 transformers movie theme, which is also called the 25 transformers rock and role theme.</p>

<p>1 Q. And what percentage are you shown on that form as 2 owning in that? 3 A. 20%. 4 Q. And do you know how that form came to be filed? 5 A. No. It's -- it's filed for Scotty Brother Records, 6 CBS, Scotty Brothers label, Holy Moley Music. 7 Q. What do you have to do with any of those parties? 8 A. Nothing. 9 Q. Who filed that form? 10 A. It says -- I don't know who filed the form. Mark 11 Perez. 12 Can you read that? That's the authorized 13 signature. 14 Q. Okay. But it's your understanding that Sunbow or its 15 publishing arm would have been responsible for the 16 filing of the exhibit? 17 A. Yeah, or would have authorized it. I couldn't file 18 it. 19 Q. Okay. And is there another form that is used to 20 register compositions with BMI? 21 A. They have a cue sheet system. 22 Q. What's a cue sheet system? We've heard about it, but 23 let's get it on the record. 24 A. A cue sheet is a record of all the music that's used 25 in a television program, and it could have like 30</p>	<p>Page 110</p> <p>1 A. The publisher files them. 2 Q. And have you come to learn in this case and has the 3 evidence shown that Sunbow or its employee, Bill 4 Dobishinski, caused forms to be filed with BMI? 5 A. Yes. 6 MR. MONAGHAN: Okay. 7 A. BMI gave them to us. 8 Q. Okay. Now, can you very quickly, just to refresh the 9 Court, as quickly as possible, Exhibit 5, can you tell 10 the Court what that was, Exhibit 5 in evidence 11 (handing)? 12 A. This is a BMI U.S. Feature Royalties Statement. At 13 top it says: BMI commercial jingles. 14 Q. What song? 15 A. It's a bunch of different songs. 16 MS. PHARES: Your Honor, I'm going to object. 17 Jingles relate to GBI. They're not in this case. 18 It's not relevant. 19 MR. MONAGHAN: We've gone around -- we've 20 show the Court, and it's already in evidence -- 21 MS. PHARES: Yes, but we've come a long way 22 since the last two years when it went into evidence. 23 MR. MONAGHAN: But we haven't gotten by that 24 point because it's still the case that your client, 25 Sunbow, produced -- and this is in evidence --</p>
<p>1 seconds of violent music, and then a wedding march, 2 and then it could have the transformers theme, and 3 each composer would be listed in their affiliation and 4 the length of that piece of music. So, that's how 5 they submit for original music written for TV. ... 6 7 MS. SAFFER: Your Honor, I wish to raise an 8 objection. Clearly, the witness can testify as to her 9 understanding, but the witness hasn't been shown to be 10 an expert, nor is she an employee of BMI, nor is she 11 somebody, by her own admissions, who normally files 12 these documents, and I'd like the record to indicate 13 at least that it's her understanding of how this is 14 done, not that it is the way that it's done. 15 MR. MONAGHAN: That's all she testified to. 16 THE COURT: All right. 17 MR. MONAGHAN: That's her understanding. 18 That was the question. Okay. 19 Q. And what do you have to do with filing clearance 20 forms? 21 A. Well, only -- 22 Q. I'm sorry. Wrong question. Cue sheets, cue sheets. 23 A. Well, I don't file cue sheets. The administrator 24 files them. 25 MR. MONAGHAN: Okay.</p>	<p>Page 111</p> <p>1 produced these transformers videos and Sunbow's name 2 is on it. It's in evidence. There's Sunbow -- 3 MS. PHARES: Well, of course they're Sunbow. 4 Sunbow produced this thing in the 1980s. Their name 5 will always be on it. 6 MR. MONAGHAN: And the evidence will show, 7 when we get to the rest of the case, when we get 8 to -- when we get by the Plaintiff -- and I've never 9 heard of a case getting dismissed right on the 10 Plaintiff's case, right on the Plaintiff, when she's 11 the witness -- but the evidence will show through Ms. 12 Weitzman, and the Plaintiff has testified, the music 13 was just handed over. The music composed as jingles 14 was handed over to Sunbow. Sunbow used it; Sunbow has 15 to pay the royalties. 16 THE COURT: Well, hold on. 17 Didn't Sunbow have the right to do anything 18 they wanted with it? 19 MR. MONAGHAN: Sure. 20 THE COURT: So, you keep saying they handed 21 it over. 22 MR. MONAGHAN: We're not complaining about 23 it; but Ms. Phares doesn't want the transformers issue 24 to be in the case because she says that was done for 25 GBI. And what we're saying is Sunbow, GBI, Bacal, we</p>

<p style="text-align: right;">Page 114</p> <p>1 don't care.</p> <p>2 MS. PHARES: I beg your pardon. There is a</p> <p>3 transformers movie that was done for Sunbow. What I</p> <p>4 am saying is that we are not talking about cue sheets,</p> <p>5 whatever, that have to do with jingles. We're just --</p> <p>6 that's not here. That's not in this case.</p> <p>7 MR. MONAGHAN: What we're talking about is</p> <p>8 the registrations with BMI.</p> <p>9 I think what's important for the Court to</p> <p>10 know, and we've been discussing this a little bit</p> <p>11 today ...</p> <p>12 Q. What effect does an incorrect registration at BMI have</p> <p>13 with respect to any use of the music? In other words,</p> <p>14 is it just -- does it only have an impact on</p> <p>15 performance royalties or does it effect any other</p> <p>16 uses?</p> <p>17 A. It effects these statements right here.</p> <p>18 MS. PHARES: Objection. Foundation.</p> <p>19 THE COURT: Hold on.</p> <p>20 MS. PHARES: Objection. Foundation.</p> <p>21 THE COURT: Sustained, sustained.</p> <p>22 A. It effects -- it effects all of my payments</p> <p>23 everywhere.</p> <p>24 MR. MONAGHAN: The objection was sustained.</p> <p>25 THE WITNESS: Oh, I forgot about that.</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. MONAGHAN: Okay.</p> <p>2 THE COURT: But --</p> <p>3 A. Yes or no.</p> <p>4 THE COURT: Well, didn't Sunbow have the</p> <p>5 power to transfer your music to anyone they wanted?</p> <p>6 THE WITNESS: As long as they gave me my</p> <p>7 royalties.</p> <p>8 THE COURT: But were your royalties then</p> <p>9 coming from Sunbow or somebody else?</p> <p>10 THE WITNESS: They didn't have my copyright</p> <p>11 until I agreed with them that I would get my royalties</p> <p>12 if I gave them the copyright. So, just because they</p> <p>13 have the copyright that doesn't excuse them paying me</p> <p>14 royalties in -- in music publishing and making sure my</p> <p>15 listings were proper for my performance royalties.</p> <p>16 THE COURT: Hold on. You say that Sunbow was</p> <p>17 responsible for your listings?</p> <p>18 THE WITNESS: Well, Sunbow registered these</p> <p>19 with BMI.</p> <p>20 THE COURT: All right. Go ahead.</p> <p>21 MR. MONAGHAN: Yeah. That's the case. You</p> <p>22 just heard of essence of it right there.</p> <p>23 THE COURT: Okay.</p> <p>24 Q. You've seen Exhibit 1. That's your BMI agreement of</p> <p>25 August '71; correct?</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. MONAGHAN: Okay. It's sustained.</p> <p>2 Q. How -- well, we've got to address this issue. The</p> <p>3 question is: When an a cue sheet is filed -- well,</p> <p>4 I'll withdraw that question.</p> <p>5 Have you come to learn that your music has</p> <p>6 been used in these various products that we've already</p> <p>7 introduced into evidence, these various DVDs, VHSs?</p> <p>8 A. Yes, all of them used my -- you're talking about</p> <p>9 transformers there?</p> <p>10 Q. Right.</p> <p>11 A. All of them used my transformers theme, and many of</p> <p>12 them actually used a master recording from my jingle</p> <p>13 recording of that and listed it on to the DVDs and</p> <p>14 VHSs for the theme for that. The same publisher</p> <p>15 published for GBI and Sunbow. They just shuffled it</p> <p>16 over. That's okay.</p> <p>17 Q. And do you know how it is that Sunbow was able to use</p> <p>18 your music, license your music to third parties,</p> <p>19 pursuant to what authority?</p> <p>20 A. Well, it was a carry-over from -- that I can see. All</p> <p>21 I can figure is because they were the publisher all</p> <p>22 along for GBI, they could do --</p> <p>23 MS. PHARES: Objection. The question is do</p> <p>24 you know. I think the answer to that is yes or no.</p> <p>25 THE COURT: I agree. Sustained.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Yeah, yes.</p> <p>2 Q. Okay. Now ...</p> <p>3 MS. PHARES: Of what period? '71?</p> <p>4 MR. MONAGHAN: Yeah.</p> <p>5 MS. PHARES: That -- that's -- even in your</p> <p>6 wildest dreams, that's earlier than any Statute of</p> <p>7 Limitations that could apply to this case.</p> <p>8 THE WITNESS: It rolls over every two years.</p> <p>9 MR. MONAGHAN: No, no; wait.</p> <p>10 MS. PHARES: What are we talking about?</p> <p>11 MR. MONAGHAN: Perhaps there's a slight</p> <p>12 misunderstanding.</p> <p>13 MS. PHARES: Are we talking about a cue</p> <p>14 sheet? I don't know what we're talking about,</p> <p>15 frankly.</p> <p>16 MR. MONAGHAN: All right. We're talking</p> <p>17 about the BMI agreement, the BMI agreement.</p> <p>18 MS. PHARES: I beg your pardon.</p> <p>19 MR. MONAGHAN: It's okay. And my</p> <p>20 recollection, the contract was six years from the</p> <p>21 breach, so the contract could be '71, but the breach</p> <p>22 could be 2005.</p> <p>23 Q. Okay. This is your BMI agreement; right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. What was your understanding of the substance of</p>

Page 118		Page 120	
1	this agreement? What did you understand BMI was going	1	listings, which impact these Sony listings and these
2	to do for you and what were you -- what were you	2	percentages all across the board.
3	giving BMI the rights to do?	3	Q. You have to tell the Court how that happens. Connect
4	MS. SAFFER: Excuse me, excuse me, Your	4	the dots.
5	Honor.	5	MS. SAFFER: Excuse me.
6	MR. MONAGHAN: I'm asking for her	6	THE COURT: Yes. Go ahead.
7	understanding.	7	MS. SAFFER: I'd like to object in that I
8	MS. SAFFER: Wait.	8	don't believe that Ms. Bryant's understanding of what
9	THE COURT: Go ahead.	9	she thought the contract may mean is relevant. What's
10	MS. SAFFER: Mr. Monaghan presented his case	10	relevant is the contract itself, and the terms, I
11	back a couple years ago, to which I then Cross-	11	believe they speak for themselves, and I'll address it
12	examined Anne. Since that time, Mr. Monaghan has come	12	further on Cross.
13	up with a novel new theory that was not in his	13	THE COURT: All right; okay.
14	original Complaint and that, frankly, was not part of	14	Q. Connect the dots, please; that is, connect your
15	his Direct Testimony with Anne. There has been	15	registration as a BMI writer.
16	nothing on Cross to bring up this new subject matter,	16	That's a performing rights society; correct?
17	and I'm going to object that it's untimely for him to	17	A. Performing rights, royalties.
18	come up with a new theory to produce on Redirect that	18	Q. And these are public performance broadcast royalties?
19	hasn't been part of the case until he came up with	19	A. Right.
20	this theory this summer in dealing with Mr. Kinder.	20	Q. And they're split into two hundred percent interest;
21	So, I will object to testimony relating to a	21	correct?
22	subject that was not part of the original Direct case.	22	A. Yes, a hundred percent for the publisher and a hundred
23	THE COURT: All right. I'm going to allow	23	percent for the writer.
24	that line of questioning within reason, and since we	24	MS. SAFFER: Again, excuse me, Your Honor.
25	don't have a jury, I'll take it for whatever	25	I'm sorry. I'm sorry to keep interrupting, but Ms.
Page 119		Page 121	
1	evidentiary worth I want to put on it.	1	Bryant and Mr. Monaghan are attempting to explain how
2	MR. MONAGHAN: Thank you, Your Honor.	2	BMI works. BMI will put on a witness, one that
3	Q. And, Ms. Bryant, same question: What was the effect	3	actually Pat has asked for himself, who can explain
4	of the BMI -- what did you understand BMI was going to	4	how BMI operates, and that it's -- it's wasting time
5	do for you; why did you join BMI in the first place?	5	to have people who are familiar with but not experts
6	A. I joined BMI -- I had met Mr. Stan Katron there, and I	6	in explaining that.
7	was trying to figure out whether I should affiliate	7	THE COURT: The witness, I assume, is talking
8	with ASCAP or BMI. He was a wonderful man. He was	8	what about she believes to be the system.
9	the head of writer relations, and I felt very good	9	MR. MONAGHAN: That's correct.
10	about the fact that they would protect my catalogs, I	10	THE COURT: Go ahead.
11	would give them my entire catalog, they would look out	11	Q. How did it work?
12	for it, they would claim for me. They were wonderful.	12	MS. SAFFER: No. How did you believe it
13	And I always had a great feeling about BMI.	13	worked, if you don't mind. I'm sorry.
14	My contract says that I -- I vouch for	14	A. After 35 years, I've all along believed --
15	everything that I list with them as original, which,	15	THE COURT: All right, all right now.
16	you know, means that everybody does that, and that	16	MR. MONAGHAN: You don't have to debate with
17	they have the right to exclude anything from licensing	17	Ms. Saffer.
18	in the BMI catalog of works that infringes by, it says	18	35 years --
19	here very clearly, by --	19	Q. What was your understanding of how this process, this
20	Q. What paragraph? Tell the Court what you mean.	20	two hundred percent process, worked?
21	A. Paragraph 11 -- by -- has a title or music or lyrics	21	A. That the publisher got a hundred percent -- the two
22	similar to that of a previously existing composition	22	hundred percent system, the publishers got a hundred
23	and may lead to a claim of unfair competition. That	23	percent of the listing and the writer or writers got
24	says to me right there that they have oversight, and	24	the writer's share, which was another hundred percent
25	I've always considered them the gatekeeper of those	25	system, which could be divided into several writers or

<p style="text-align: right;">Page 122</p> <p>1 multiple publishers as listed in either a clearance 2 form or on a cue sheet.</p> <p>3 Q. Okay. Now, there came a time, did there not, when you 4 found that there were some problems? You testified to 5 this already, so I don't think it's ... There came a 6 time when you discovered some problems with your 7 catalog; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. When was that?</p> <p>10 A. Initially in 19 -- the end of 1997 was when I -- when 11 I -- I saw some problems on the website, the brand new 12 website.</p> <p>13 Q. Okay. And Exhibit 2 in evidence, that is your 14 catalog, isn't it, your BMI catalog?</p> <p>15 A. Yes.</p> <p>16 Q. And this is produced as of what date, however?</p> <p>17 MS. SAFFER: Excuse me, Your Honor. You 18 know, this is, I guess, what we learned in -- in 19 grammar school, as the two bites at the same apple.</p> <p>20 Ms. Bryant testified; we went through all of 21 this. What Mr. Monaghan is doing is pulling out the 22 same exhibits and eliciting the same testimony. In 23 case he didn't get it the way he wanted originally, 24 he's going to see if he can't fix it the second time 25 around.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. So, what's the state of the catalog listings now as we 2 sit here today?</p> <p>3 A. Didn't you ask me another question?</p> <p>4 MS. SAFFER: Objection.</p> <p>5 A. I got this question in 2000. I didn't finish 6 answering my question.</p> <p>7 Q. What's the date on the print-out?</p> <p>8 A. 3/16/2000.</p> <p>9 Q. How did you get that catalog?</p> <p>10 A. I didn't get any help from -- from BMI after two years 11 of writing and trying to get some answers on my 12 catalog, so I went to you, Patrick Monaghan, and said, 13 something's up, and you got -- we began this action. 14 And that's when I -- two years later is when I got a 15 copy of my catalog.</p> <p>16 Q. And there's even a letter to Mr. Charlie Feldman. Do 17 you know who he is?</p> <p>18 A. Oh, yeah.</p> <p>19 MR. MONAGHAN: And that's in evidence.</p> <p>20 THE COURT: Okay. I really don't see what 21 difference it makes, Counselor, when this was 22 received. I mean, historical information --</p> <p>23 THE WITNESS: Well, it took me two years to 24 get my own catalog.</p> <p>25 THE COURT: Just a moment, just a moment.</p>
<p style="text-align: right;">Page 123</p> <p>1 We've gone through all of this ground the 2 first couple of days of trial. Now, you have limited 3 the amount of time that you're going to be spending on 4 this case right now, and I don't think it's 5 appropriate for them to redo what has already been 6 done and then maybe not give us time to reach new 7 material.</p> <p>8 THE COURT: Let me just ask, Mr. Monaghan, 9 where are we going with this?</p> <p>10 MR. MONAGHAN: We don't have much more on 11 this, but let me just say --</p> <p>12 THE COURT: We did actually go through this.</p> <p>13 MR. MONAGHAN: We've had a two-year hiatus in 14 the case. The context for any questions I might ask 15 has to be set forth on the record now or it won't make 16 any sense.</p> <p>17 THE COURT: Well, let's really speed this 18 along.</p> <p>19 MR. MONAGHAN: And I appreciated Your Honor 20 saying you're going to give us wide latitude on this.</p> <p>21 MS. SAFFER: Yeah.</p> <p>22 THE COURT: I always regret things that I 23 say.</p> <p>24 Go ahead.</p> <p>25 MR. MONAGHAN: All right.</p>	<p style="text-align: right;">Page 125</p> <p>1 THE WITNESS: I'm sorry.</p> <p>2 MR. MONAGHAN: Moving on.</p> <p>3 THE WITNESS: I'm sorry, Your Honor.</p> <p>4 MR. MONAGHAN: Exhibit 29.</p> <p>5 Ms. Reporter, you don't have Exhibit 29 in 6 evidence; is that correct?</p> <p>7 THE COURT: I don't have it in evidence.</p> <p>8 It's not in evidence.</p> <p>9 MS. PHARES: No, it was -- it was excluded.</p> <p>10 THE COURT: Right.</p> <p>11 MR. MONAGHAN: Right.</p> <p>12 THE COURT: It was on the GI Joe royalty.</p> <p>13 MR. MONAGHAN: Right.</p> <p>14 MS. PHARES: And it has to do with jingles.</p> <p>15 MR. MONAGHAN: I'm going to -- I don't know 16 why it's not in evidence. I'm going to ask the 17 witness to identify it. It should be in evidence. 18 It's a statement addressed to Anne Bryant. If she 19 received it, there's a sufficient foundation for 20 getting it.</p> <p>21 MS. PHARES: Your Honor, this was excluded on 22 July 7, 2004. Are we going to just repeat the whole 23 case over again?</p> <p>24 MR. MONAGHAN: I don't think so.</p> <p>25 THE COURT: Well, I don't remember why it was</p>

	Page 126		Page 128
1	excluded.	1	THE COURT: 45 was --
2	Is it to Ms. Bryant?	2	MS. PHARES: Was also excluded.
3	MS. PHARES: Maybe we can find out for you.	3	THE COURT: Energies TV program, the bunny,
4	THE COURT: It's to Ms. Bryant.	4	yes, energizer TV program.
5	MR. MONAGHAN: It's to Ms. Bryant.	5	THE WITNESS: No, it's not the bunny, Your
6	MS. SAFFER: I believe -- I believe --	6	Honor. It's a different --
7	THE COURT: Just a moment.	7	THE COURT: Are you correcting me?
8	Go ahead. Why do you think it was excluded?	8	THE WITNESS: I'm just letting you know.
9	MS. SAFFER: I believe it was excluded	9	THE COURT: People say energizer, I always
10	because it dealt with jingles and that wasn't the	10	imagine it's the bunny.
11	basis for this lawsuit. It was not relevant.	11	THE WITNESS: Oh, no, that's a television
12	THE COURT: All right. There you go.	12	show called Energi.
13	MR. MONAGHAN: Well, jingles are the basis of	13	MR. MONAGHAN: Do you have 29?
14	the lawsuit. This is -- the jingles are mentioned	14	MR. PHARES: I have 29.
15	right in the -- in the statement, and it's -- you can	15	MR. MONAGHAN: What about 45?
16	take it for whatever weight it has, but it was sent to	16	MS. PHARES: No, I don't have 45.
17	you.	17	MR. MONAGHAN: My records did not indicate
18	THE COURT: No, this is like before, you	18	whether you had --
19	know, when it's in evidence, it's in evidence. I'm	19	MS. PHARES: Well, our records indicate that
20	not going to go back. And if you want to dig up the	20	it was excluded.
21	record from two years ago, I'll look at the record,	21	Was this a download by any chance?
22	but I'm not going to allow it in.	22	THE WITNESS: No.
23	Let's go ahead.	23	MR. MONAGHAN: No.
24	MR. MONAGHAN: Okay.	24	THE COURT: Well, if it was excluded, unless
25	Q. So, just to summarize the claims against BMI, so that	25	you can dig up the point where it was excluded and I
	Page 127		Page 129
1	the Court has a clear idea why it is you're suing BMI,	1	can take a look at it again, it's still out.
2	tell the Judge why you're here today suing BMI? What	2	MR. MONAGHAN: Okay. Well, I'm just going to
3	did they do wrong?	3	make the offer of Exhibit 45, just let her identify it
4	A. Well, they failed to safeguard my catalog, and it	4	for the record here. If it's excluded on the same
5	appears that these cue sheets are back door to	5	basis, fine.
6	changing people's listings from 100% or 50% down to	6	THE COURT: All right.
7	8%. And it was after two years of tooth-pulling	7	Q. I show you now, just for the record, if you can
8	efforts that we finally got -- I had to hire an	8	identify Exhibit 45, Ms. Bryant?
9	attorney -- that I finally got my catalog so I could	9	A. Okay. From the Internet Movie Data Base, this is a
10	actually see all that was going on in my catalog, so	10	read-out on the television show currently airing
11	that I could even begin to understand the extent of	11	called Transformers Energi. It's one of three
12	why my income had gone away and why there were changes	12	television shows using my television theme for the
13	that were in front of my face on the website that	13	last five years without any accounting to me.
14	didn't make any sense to me. But for two years, they	14	MS. PHARES: Your Honor, I think the reason
15	refused to help me, and then when I sued them, they	15	that this was excluded is because Sunbow didn't make
16	joined with the other Defendants against me, and it's	16	this program. It doesn't distribute it. It has
17	been nothing but controversy ever since and -- instead	17	nothing to do with it. It may very well be that the
18	of straightening out the catalog. And then two years	18	copyright owner, the ultimate copyright owner,
19	ago they said they wanted to straighten out the	19	licensed the work to another production company; has
20	catalog, and here we are.	20	nothing to do with Sunbow. And I believe that's what
21	THE COURT: All right. I think we are far	21	we told you the last time, and it was excluded.
22	beyond any question that was posed. Let's go ahead.	22	THE COURT: Well, how does a person like Ms.
23	MR. MONAGHAN: Okay.	23	Bryant, then --
24	Q. Exhibit 45, it may have suffered the same fate as 29,	24	MS. PHARES: And, in fact, that is indeed
25	I don't remember, but --	25	what I said to you the last time.

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1	THE COURT: How does she get redress for lost	1	35 years.
2	money under those circumstances?	2	MS. PHARES: But the Court asked something
3	MS. PHARES: Well, there are -- there are	3	about --
4	only certain occasions in which she is entitled to	4	THE COURT: You know what the problem is,
5	money. She is not always entitled to money. That's	5	folks? It's 4:10 and people are getting testy.
6	her assumption, but that is not the case. It's sort	6	Now, let's all relax. Take a deep breath.
7	of the example, if I may say so, Your Honor, of what	7	And, Ms. Bryant, if you could quickly sum up what you
8	Ms. Saffer described to you in chambers, of the man	8	were saying.
9	who created the resistor. He was -- transistor, I	9	THE WITNESS: It's not a work-for-hire until
10	mean. He was paid certain monies, but he did not get	10	I sign a contract that's satisfactory to me that makes
11	money from every exercise of the transistor patent.	11	it a work-for-hire. And, at that point, Your Honor, I
12	And that's the same situation that applies here.	12	give them the copyright, and contemporaneously they
13	THE COURT: Now, as I understand it, a	13	license back my royalties. That's the way it was done
14	work-for-hire person may or may not get any rights; is	14	my entire career.
15	that true?	15	THE COURT: Okay. So, M is a work-for-hire
16	THE WITNESS: If they're -- yes, if they	16	agreement --
17	don't provide that their contracts give back the	17	THE WITNESS: Yes.
18	royalties, which I always do.	18	THE COURT: -- where you got back only those
19	THE COURT: Okay. Go ahead.	19	rights that are absolutely set forth in that
20	MR. MONAGHAN: Your Honor, that sets on a	20	agreement?
21	good subject matter to cover.	21	THE WITNESS: Yes.
22	Q. And the work-for-hire concept as it applied to these	22	THE COURT: Nothing beyond that?
23	relationships, who is the hirer and who is the hiree?	23	THE WITNESS: And that's all of them, that I
24	MS. SAFFER: Excuse me. These relations? We	24	can tell. I don't know of any other rights I would
25	have talked about lots of --	25	ask for.
	Page 131		Page 133
1	MR. MONAGHAN: Sunbow.	1	THE COURT: All right. Let's go ahead.
2	MS. SAFFER: Sunbow; okay.	2	MR. MONAGHAN: Your Honor, is this a good
3	Q. The Jem agreement, what is it, Exhibit M?	3	time -- if you give me five minutes, I probably don't
4	A. Uh-huh.	4	have more than five minutes more.
5	Q. Did you understand who was being hired in the Sunbow	5	THE COURT: All right. Go ahead. We're
6	agreement? You have three --	6	going to quit at 4:30, so, take your time.
7	A. Because that last question was a little funny. I	7	MR. MONAGHAN: No, I was going to say, if
8	understand that -- you're kind of starting from the	8	you'd give us a five-minute break to look over
9	middle of the copyright story.	9	everything, make sure I covered everything.
10	I write a piece of music as an individual.	10	THE COURT: All right. I'll give you five
11	At the point where someone wants to buy it, I have to	11	minutes. Go ahead.
12	sign a piece of paper that says this will be deemed a	12	(Whereupon a recess was taken at
13	work for hire and I'll turn over the copyright to you.	13	4:10 PM.)
14	I could have had the song for ten years before I did	14	(Trial resumes at approximately 4:20 PM.)
15	that.	15	THE COURT: Ms. Bryant, come back on the
16	Okay. Then, at that point that I sign it	16	stand.
17	over, it presumes that I have --	17	(Whereupon the Plaintiff resumes the
18	MS. PHARES: Objection, Your Honor. This	18	witness stand.)
19	is --	19	MR. MONAGHAN: One last question.
20	A. -- I have gotten all of these rights.	20	THE COURT: That's what they all say.
21	MS. PHARES: This is calling for a legal	21	
22	conclusion. And I might add that the answer is so	22	
23	wrong that we just shouldn't go here. This is just	23	
24	not an accurate description of the law.	24	
25	THE WITNESS: This is my way of working for	25	

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1	MR. MONAGHAN: I know they all say that.	1	Q. And I believe you testified that on some of these
2	THE COURT: All right.	2	registrations, you're credited with fifty percent,
3	REDIRECT EXAMINATION BY MR. MONAGHAN: (Cont'd)	3	some with a hundred, and some with as little as, I
4	Q. Ms. Bryant, can you look at Exhibit M, the Jem	4	think you said, eight-and-a-half percent; is that
5	agreement?	5	correct?
6	A. Jem agreement, yes.	6	A. Eight -- 8.3, yes.
7	Q. Okay?	7	Q. 8.3; okay. You also testified, I believe, that you
8	A. Okay.	8	don't normally submit registrations or cue sheets, but
9	Q. And let me direct your attention to Page 7. Yeah.	9	that they are submitted, you said, in this instance by
10	You're looking at the same page that I've got	10	Sunbow or Sunbow's representative, Bill Dobishinski?
11	the blow up of?	11	A. In a work-for-hire situation it's their responsibility
12	A. Yes.	12	as publisher. I submit my own at times.
13	Q. Okay. Would you read that last sentence, please?	13	Q. Okay. During the first part of the trial, isn't it
14	A. The whole page?	14	true that there were documents produced that indicated
15	Q. The one -- no, the last sentence.	15	that Bill Dobishinski was also representing you and
16	A. All royalty statements ...?	16	Mr. Kinder?
17	Q. All royalty statements ...	17	A. He was the -- he was administrator for Sunbow, and he
18	A. Okay. "All royalties statements and other accounts	18	also administrated for all of Sunbow's writers.
19	rendered by Company shall be binding upon contractor	19	Q. Well, then, if he administered for Sunbow's writers,
20	and not subject to any objection by contractor, unless	20	he administered for you and Mr. Kinder; correct?
21	specific objection in writing stating the basis	21	A. Well, he accounted to us, yes. He was the
22	thereof is given to Company by contractor by one year	22	administrator for Sunbow.
23	from date rendered."	23	Q. No, I didn't say for Sunbow and neither did you.
24	Didn't I just do that?	24	There was correspondence that was produced which
25	Q. Who's the contractor?	25	showed that he represented the two of you.
	Page 135		Page 137
1	A. Kinder and Bryant.	1	A. As an administrator, yes.
2	Q. Who's the writer?	2	Q. Wasn't there also correspondence -- I mean testimony
3	A. Anne Bryant.	3	that you gave in the beginning of the trial that said
4	MS. PHARES: And Ford Kinder.	4	that you and Mr. Kinder had an arrangement, that the
5	THE WITNESS: And/or Ford Kinder.	5	royalties were collected and you split them 50/50?
6	MS. PHARES: Your Honor, objection.	6	A. That's right.
7	MR. MONAGHAN: That's all I have, Your Honor,	7	Q. Okay. So that, in essence, it didn't matter to you
8	on Redirect.	8	how they were registered, as long as you got what you
9	THE COURT: All right.	9	considered your fair share?
10	MS. PHARES: Objection, Your Honor. The	10	A. That's not fair to say, that I didn't care how they
11	document speaks to itself, and unless there be any	11	were registered. I wanted them registered properly.
12	question, it quite clearly says that this is for the	12	Q. Well, what was properly?
13	services of Anne Bryant and Ford Kinder, jointly	13	A. Well, properly, with the person who had the authority
14	referred to as Writer.	14	to register them, with the responsibility of
15	THE WITNESS: All right; yes, that's true.	15	registering them, registering the proper percentages.
16	I'm sorry.	16	Q. You indicated in your testimony that the proper person
17	THE COURT: All right.	17	to register it was the individual representing, in
18	Ms. Saffer, do you have a few questions?	18	this case Sunbow, or the production company. You
19	MS. SAFFER: I do, Your Honor.	19	testified to that a number of times.
20	RECORDING BY MS. SAFFER:	20	A. Okay.
21	Q. During the course of Redirect there were a number of	21	Q. You also testified that the man who registered a great
22	questions directed to the fact that there are multiple	22	many of these represented you.
23	registrations for a number of works that were written	23	A. Yes, but there were also registrations for -- for
24	by you and Mr. Kinder; correct?	24	example, that were given to me in this past afternoon
25	A. Yes.	25	that were registered by other people who were not the

<p style="text-align: right;">Page 138</p> <p>1 -- Sunbow and were not the administrator for Sunbow 2 productions.</p> <p>3 Q. Did you have authority, when you were not the 4 copyright owner, to say what the copyright owner would 5 do with these works that no longer belonged to you by 6 your own admission?</p> <p>7 A. Wait a minute. Star Wild was my publisher. Somebody 8 else, out of left field, is registering my song. I 9 don't understand that.</p> <p>10 Q. How do you know it's somebody out of left field?</p> <p>11 A. Because none of these people have the names that 12 they're supposed to have to be registering my songs 13 for Star Wild and Sunbow. Holy Moley Music? Who's 14 that?</p> <p>15 Q. How do you know what Sunbow did with the music which 16 was owned by Sunbow?</p> <p>17 A. That's a very good question. I'm glad you brought 18 that up. How could I possibly know what they're 19 doing?</p> <p>20 Q. What right did you have, what right --</p> <p>21 A. I have that right. I have the music publishing rights 22 and I have the performance rights, and they just can't 23 go licensing it around and avoiding me getting my 24 payments for publishing -- music publishing money and 25 performance rights money. They just can't put on</p>	<p style="text-align: right;">Page 140</p> <p>1 THE COURT: Go ahead.</p> <p>2 Q. Can you read that to the Court, please?</p> <p>3 A. B. "Without in any way limiting the generality of the 4 foregoing, it is agreed that the Company shall have 5 the exclusive right and may license others to use, 6 adapt, arrange, change, add to, or subtract from the 7 music and to combine the same with other reproduced, 8 transmit, perform, broadcast, telecast, and/or 9 otherwise communicate the same or any version or 10 versions thereof by any means, including, but not 11 limited to, in synchronization with motion pictures, 12 television, and/or other form of recordation or 13 reproduction of sight and/or sound, whether now known 14 or hereafter devised, publicly, for profit, or 15 otherwise, it being understood the Contractor and 16 Writer hereby waive any so-called moral rights" -- 17 ha -- "which may now be or may hereafter be 18 recognized. It is understood and agreed that neither 19 Contractor, nor Writer shall have any right, title, or 20 interest in any other literary material and/or lyrics 21 which may be combined with the music."</p> <p>22 My God, how do you guys write this stuff?</p> <p>23 Q. I will ask you, although you're not a writer --</p> <p>24 A. I am a writer.</p> <p>25 Q. I mean -- excuse me, excuse me. That was a slip. I</p>
<p style="text-align: right;">Page 139</p> <p>1 Armada and Energi and all of these TV shows and avoid 2 me. I have a contract.</p> <p>3 MS. PHARES: Objection, Your Honor.</p> <p>4 Foundation.</p> <p>5 THE COURT: No, I think that --</p> <p>6 MS. PHARES: Ms. Bryant is not -- not only 7 does she not know how it's being licensed, she doesn't 8 even know whether or not she's entitled to money when 9 it is licensed.</p> <p>10 THE COURT: I take her statement just as an 11 expression of her own frustration as she sees it.</p> <p>12 THE WITNESS: I'm supposed to get the 13 performance rights royalties, Mrs. Phares. Why are my 14 things being broadcast and I'm not getting them?</p> <p>15 THE COURT: All right. Now, there's no 16 question pending. Please don't answer anything.</p> <p>17 MS. SAFFER: Well, Your Honor, you'll have to 18 forgive me on this. Mr. Monaghan has only blown up 19 the pages of this contract that he thought was 20 relevant, which, okay; fair enough. I didn't know we 21 were going to be addressing this. So, do you have a 22 copy of the contract? It's Exhibit M.</p> <p>23 THE COURT: It's right here.</p> <p>24 MS. SAFFER: Okay.</p> <p>25 Q. Page 2, Paragraph 5B.</p>	<p style="text-align: right;">Page 141</p> <p>1 apologize -- that you're not a lawyer, does it not say 2 that they have the right to do with this as they see 3 fit?</p> <p>4 A. Yeah, but they have to give me the royalties.</p> <p>5 Q. No, they only have to give you the royalties as 6 spelled out there. This allows them to take this 7 music that they now own, license it, use it, give it 8 to anybody else, combine it with other music, adapt 9 it, arrange it, etcetera. That's what this contract 10 that you signed gives them the right to do.</p> <p>11 A. An arrangement is not a composition, Ms. Saffer. You 12 know that. Arrangers -- I'm an arranger. Arrangers 13 don't get royalties. Composers get royalties. I get 14 my royalties as a composer. This is a composition.</p> <p>15 Q. Doesn't this contract give them the right to make new 16 versions of the music, to take it, to change it in any 17 way they see fit as the owner of the music?</p> <p>18 A. Yes; but they haven't done that. They're using the 19 same song. That's not a change. An arrangement is 20 not a change. An arrangement's an arrangement. And 21 if that's the excuse, that doesn't hold.</p> <p>22 Q. Well, clearly you're entitled to believe what you wish 23 to believe.</p> <p>24 A. You pay royalties on arrangements?</p> <p>25 THE COURT: All right. Please, let's not</p>

	Page 142		Page 144
1	have any argument here.	1	your responsibility as -- as the person licensing.
2	Do you have one more question? That's going	2	THE COURT: All right. We're going to stop
3	to be it.	3	for tonight. Tomorrow at 2:00 o'clock we will resume.
4	MS. SAFFER: Yes, I have one more question.	4	The only thing left with Ms. Bryant is a
5	It may have to have a couple of parts.	5	Recross, should there be one, and whatever --
6	THE COURT: All right.	6	MS. SAFFER: I haven't finished this, just
7	MS. SAFFER: Forgive me.	7	this line of questioning.
8	Q. Mr. Monaghan also referred you to the BMI contract	8	THE COURT: Well, that's it for today.
9	that you signed as a writer; correct?	9	MS. PHARES: Your Honor, my understanding was
10	A. Yes.	10	that you were going to hear arguments.
11	Q. Do you have it in front of you there?	11	THE COURT: Yes, yes, I'm going to hear
12	A. Yes.	12	arguments. I'm going to rule on any motions that I
13	Q. Okay. Paragraph 4 talks about the rights that were	13	have to tomorrow, and we'll see where we go.
14	granted to BMI by you.	14	MS. PHARES: And, Your Honor, if I may just
15	MS. SAFFER: Do you have it there, sir?	15	pursue that? If -- well, maybe we'll wait until
16	THE COURT: No.	16	tomorrow.
17		17	I was going to say: At the moment, all of
18	(Handing to Judge.)	18	the witnesses on our list, certainly, and on Mr.
19		19	Monaghan's list were directed towards this oral
20	Q. All right. Paragraph 4. Doesn't that paragraph	20	agreement theory. And I don't know what's left.
21	indicate that what you have granted to BMI is the	21	THE COURT: Well, I'll give you an example.
22	right to license the public performance of your	22	Mr. Monaghan may want to put on some expert dealing
23	rights -- you haven't granted to BMI anything else but	23	with the right to have an accounting. I don't know.
24	the right to license the public performance of the	24	I'm not going to put myself in his shoes; but I don't
25	music; correct?	25	know what's going to happen, except that, from my
	Page 143		Page 145
1	A. Yes, that's -- that looks right.	1	standpoint, the written agreements are all as the Jem
2	Q. Therefore, you haven't asked BMI to be your agent,	2	contract set forth, and the -- there are no oral
3	your representative, whatever word you want to use,	3	agreements. The oral agreements got folded into them.
4	for any other rights you may have, just the right to	4	And that the only question that I saw left was whether
5	license the public performance?	5	there was a cause of action that either directly or
6	A. (No verbal response.)	6	indirectly caused this Court to move now to say, okay,
7	Q. If that's the case, how can you expect BMI to be	7	there has to be an accounting. And I'll listen to
8	responsible to you if any other right you may have is	8	those arguments tomorrow.
9	violated? On what basis would BMI be obligated to do	9	MS. PHARES: Thank you, Your Honor.
10	that on your behalf?	10	THE COURT: All right.
11	A. You're asking me a good question. I like this	11	THE WITNESS: Can I take these statements
12	question.	12	home?
13	If I have a song in my catalog, that I'm a	13	THE COURT: No. You have to talk to your
14	BMI writer all these years, and it's a BMI catalog of	14	lawyer about it. He'll give you a copy of them.
15	works, right, and it takes -- it's used in situations	15	THE WITNESS: We didn't get this.
16	where it must be licensed by you, but the people who	16	MS. PHARES: Well, Your Honor, I don't know
17	are being paid are all ASCAP writers, now how does	17	where these original Plaintiff's exhibits are in the
18	that happen, as in the case of Enerjon and Armada and	18	room, but --
19	these other TV shows, that a BMI title, the	19	MR. MONAGHAN: In that pile.
20	transformer's being paid to ASCAP writers, and BMI is	20	THE COURT: Ms. Saffer, here's your copy.
21	not saying, hey, wait a minute; that's a BMI title?	21	MS. SAFFER: That's of the contract?
22	Explain to me. Why don't you claim that for	22	THE COURT: Yeah, that's of the contract.
23	me? How do you feel about ASCAP writers collecting on	23	MS. SAFFER: You need it or want it or would
24	BMI songs?	24	you rather not?
25	I don't understand. I think that's part of	25	THE COURT: All right; I'll take it.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 146 INDEX TO EXHIBITS (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF TRIAL TRANSCRIPT FROM JULY 9, 2004 - MARKED FOR IDENTIFICATION.)..... 35:5 (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF TRIAL TRANSCRIPT FROM JULY 9, 2004 - RECEIVED IN EVIDENCE.)..... 36:7 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT OF ANNE BRYANT DATED 12/6/05 - MARKED FOR IDENTIFICATION.)..... 37:14 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT OF ANNE BRYANT DATED 12/6/05 - RECEIVED IN EVIDENCE.) 38:13 (PLAINTIFF'S EXHIBIT NO. 48 - LETTER AND ACCOUNTING STATEMENTS - MARKED FOR IDENTIFICATION.)..... 89:18
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 147 CERTIFICATION I, LAURIE HARDISTY, a Stenographic Reporter for the State of New York, do hereby certify that I recorded Stenographically the proceedings herein, at the time and place noted in the heading hereof, and that the foregoing is an accurate transcript of same, to the best of my knowledge and belief. _____ LAURIE HARDISTY